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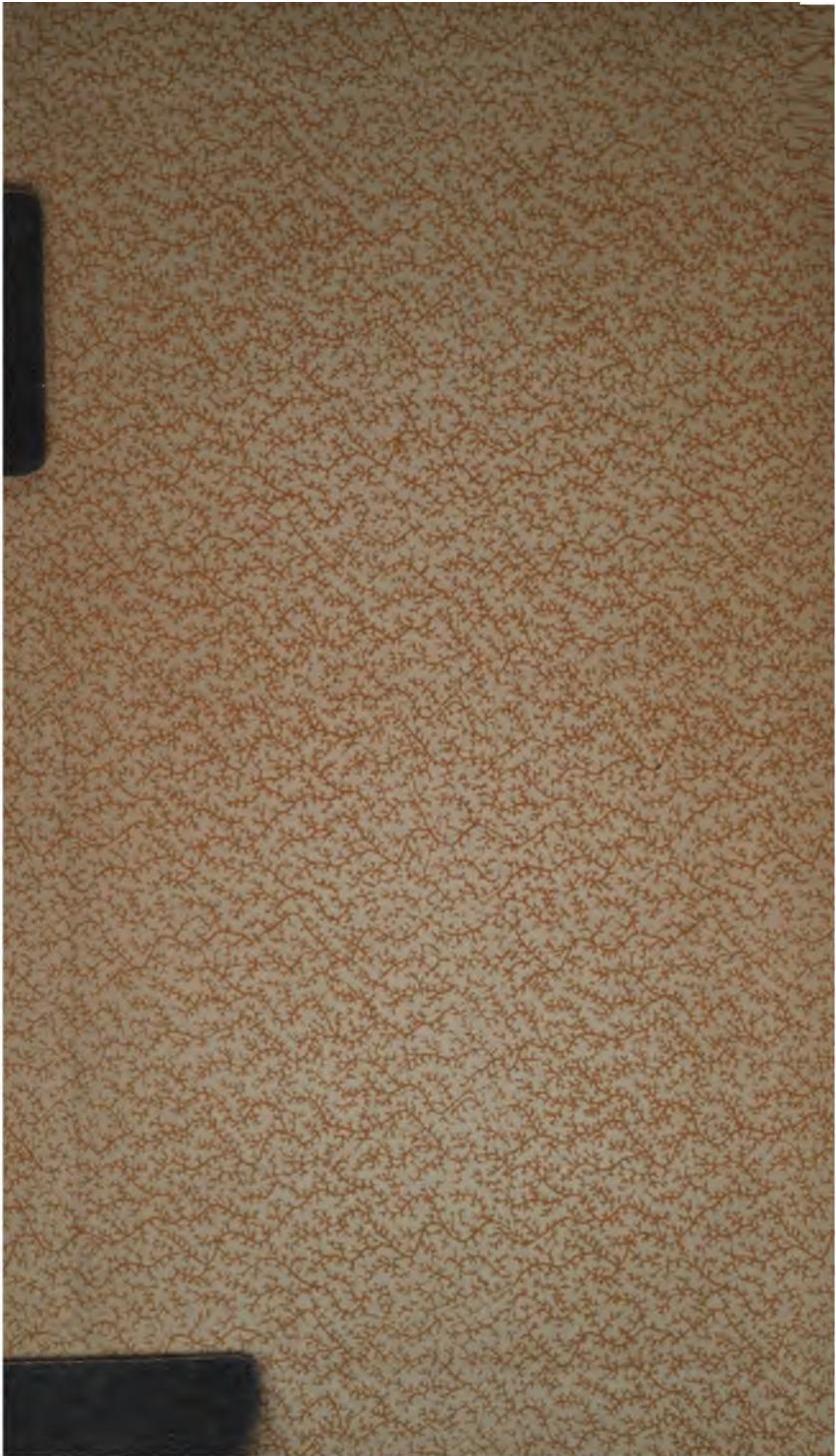
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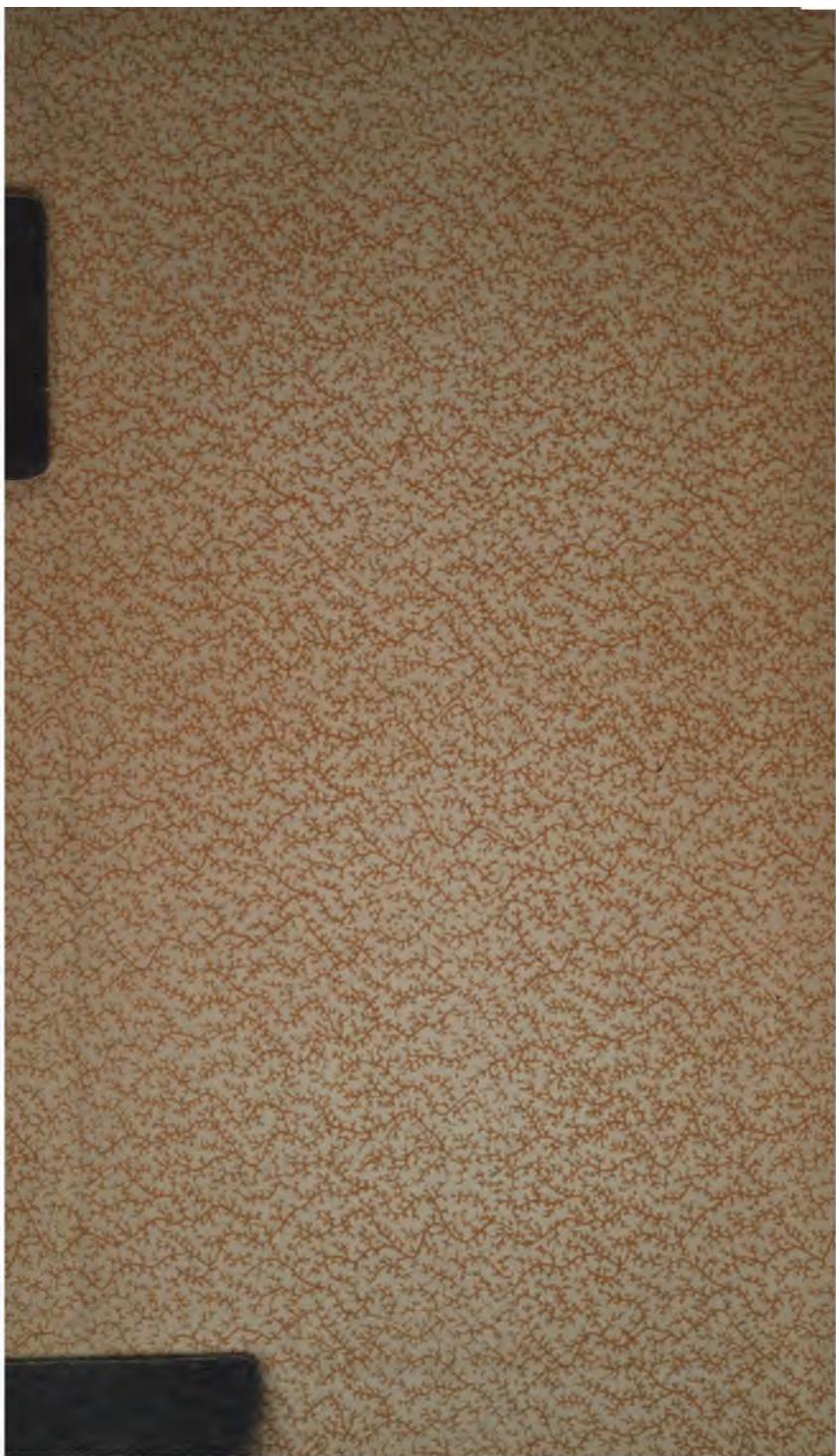
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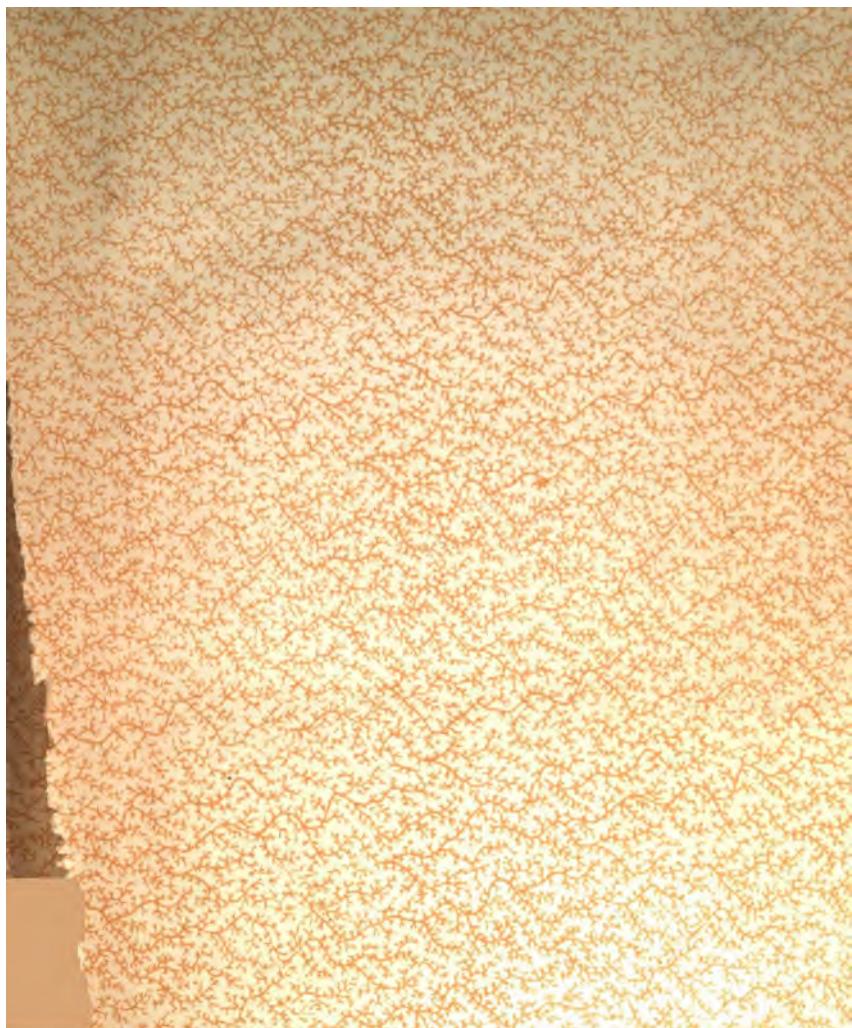


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AN ESSAY  
ON  
THE HISTORY  
OF THE  
ENGLISH GOVERNMENT  
AND  
CONSTITUTION,  
FROM THE REIGN OF HENRY VII.  
TO THE PRESENT TIME.

---

By LORD JOHN RUSSELL.

---

Qualis frugifero quercus sublimis in agro,  
Exuvias veteres populi, sacrataque gestans  
Dona ducum ; nec jam validis radicibus haerens,  
Pondere fixa suo est :  
At quamvis \_\_\_\_\_  
Tot circum silve firmo se robore tollant,  
Sola tamen colitur. LUCAN.

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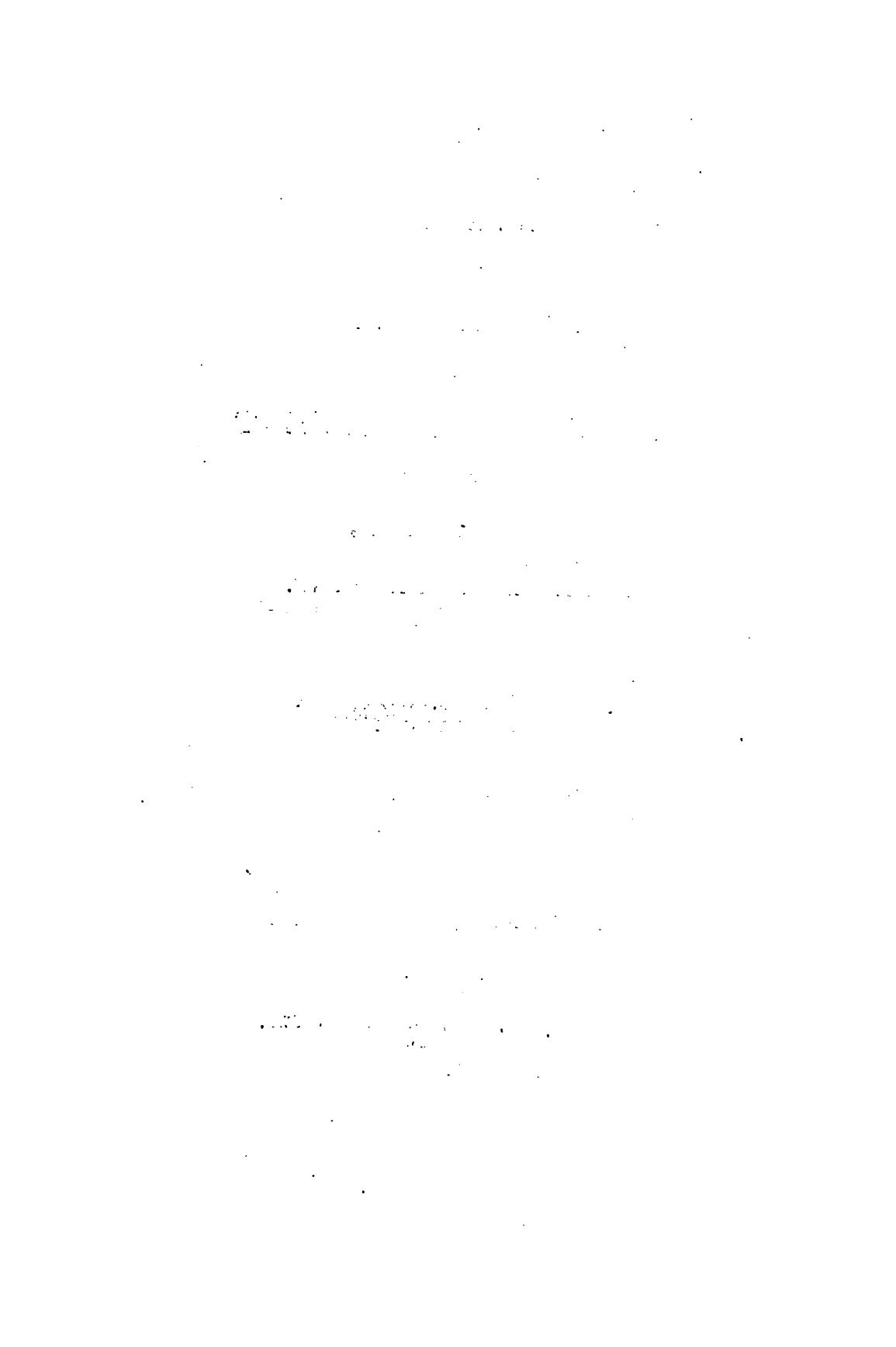
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1823.





TO

## CHARLES, EARL GREY,

THE CONSTANT FRIEND OF MR. FOX,

IN PUBLIC AND IN PRIVATE LIFE;

THE UNDAUNTED CHAMPION

OF CIVIL AND RELIGIOUS FREEDOM,

IN ALL TIMES, AND IN ALL CIRCUMSTANCES;

THE ENLIGHTENED LOVER OF HIS COUNTRY,

IN ALL HER PERILS AND PERPLEXITIES;

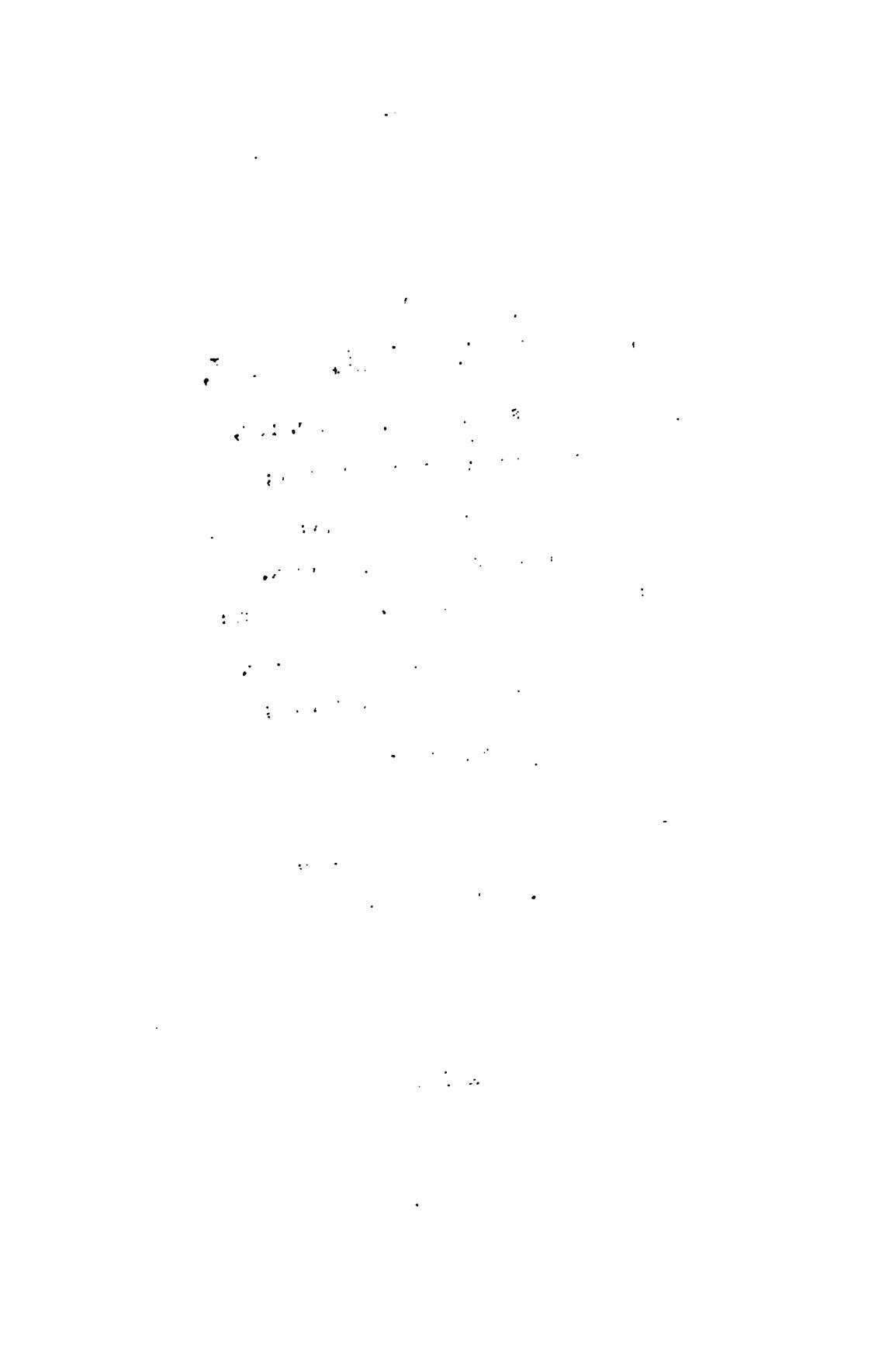
*THIS BOOK*

IS DEDICATED,

AS A TOKEN OF RESPECT, ESTEEM,

AND ADMIRATION,

BY THE AUTHOR.



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ation, respecting either better or worse  
types of government, has been found; but all  
such extraneous considerations of course, and  
all of those depending upon hereditary gifts  
and the like.

## PREFACE.

This edition will include also a sketch of the  
Principles of Government, and their

Stages of Civilization. But the  
**T**HE history of society, so far as regards go-  
vernment, may be divided into four different  
stages of civilization.

1st. The state of savage life.—This is  
the origin of all society, is to be found at the  
beginning of every history, and is exemplified  
to this day in North America, and some of  
the newly discovered parts of the world. Such  
was the state in which Cæsar found the greater  
part of Britain, the sea-shore only being cul-  
tivated, and the interior occupied, or rather  
wandered over by hunters.

2d. The state of imperfect government.—  
This stage of society exists when men are in

some degree settled, when property is established ; but the force of government is as yet too weak to afford adequate protection to those who acknowledge its authority. Such is the state of a great part of the dominions of Turkey in Asia ; such, during the middle ages, was the condition of the greater part of Europe.

No man was secure except by the force he could bring to his assistance ; the highways were infested with robbers ; murder and pillage were dignified with the name of war ; and men sought, under the wing of some powerful lord, or in private associations, that safety for life and property which government could not afford.

3d. The third stage of civilization is a state of order without liberty. — Such is the state of China, of Persia, and of our own Indian empire ; such, likewise, was the state of the provinces under the Roman empire, when, if the provincials complained of the taxes, they were told to compare their condition with the inse-

curity of the barbarous tribes in their neighbourhood, and bear their burdens for the sake of the public order they purchased. “ *Nam neque quies gentium sine armis, neque arma sine stipendiis, neque stipendia sine tributis haberunt queunt.* ” \*

Such, likewise, was the state of the greater part of Europe from the time when the anarchy of the middle ages ceased, to the commencement of our own age; it was the state of France till the end of the 18th century, and that of Spain till within these few years. It still is the condition of society in Austria, Italy, Russia, Prussia, and Denmark, which remain, so far as respects government, in a state of civilization less advanced than those countries which are in the enjoyment of freedom. The best form under which this kind of government appears is that of a monarchy supported by established laws. So long, indeed, as law is invariably observed without distinction of persons, there exists a certain degree of liberty; and, on the other hand, if

\* Tacitus, Hist. lib. iv.

the laws are wantonly and perpetually broken, even order, the redeeming principle of this imperfect form of society, is wanting, and men are left as much at the mercy of an agent of administration, dressed in a judge's robe or official gown, as they would be in a more barbarous state at the discretion of savage banditti.

4th. The union of liberty with order. — I do not take notice of a state of liberty without order, because it is generally temporary, and, if permanent, comes under the head of imperfect government. Indeed, in such a state there is no liberty, but license, which is the enemy of all liberty.

The union of liberty with order, then, is the last stage of civilization and the perfection of civil society. It is in proportion as these two qualities are combined that the merit and the value of different governments are to be estimated; the larger portion they have of both, the more adapted they are to diffuse happiness among their subjects. Thus in Athens, where liberty

All these kinds of government leave the passions of man their full sway, and are consequently marked with injustice and oppression towards individual members of the community.

The most celebrated governments of ancient and modern times which have succeeded best in combining liberty with order, are Sparta, Rome, and England. Of these I have no hesitation in saying England, since 1688, is the most perfect. Indeed, it is evident to any one who reads the history of Sparta and Rome, that their institutions were intended for small communities, contained in the neighbourhood of a single city, and that the very force and strength which their form of government produced, tended, by increasing the commonwealth, to destroy the laws and manners which gave them birth. Not so with England; she does not reject wealth; she does not reject commerce; she does not even reject extended empire from the plan of her constitution; she rejects nothing but continental greatness, and an overgrown military establishment.

national opinion; when Mexico shall be a bordering and a rival empire; when generals shall arise with more brilliant talents, and a less virtuous character than Washington; when the love of power and dominion corrupts her presidents and statesmen; it is then it will be decided whether the institutions of America are wiser than those of England.

It must be confessed, however, that should America stand this test, or even should she continue to flourish for the next century, it will no longer be just to withhold from her the preeminence among the governments of the globe. She will have resolved successfully the great problem, how to secure the enjoyments of order and public tranquillity with the least possible check on the development of human faculties — in short, how to obtain for man in the greatest proportions, the blessings of security, peace, liberty, and knowledge; —she will have resolved this problem too by a machinery much less complicated

was the chief object of the constitution, order was no better observed than in the absolute government of France, and the democracy there were often to the full as tyrannical as Richelieu. On the other hand, Venice, which professed to be a free government, kept admirable order, but to attain this point it sacrificed liberty, and was, in its way, perfectly arbitrary. Thus, whichever way the balance is overthrown, the interests of the community suffer, and freedom itself is impaired — for a free man ought to be able both to do all that is not forbidden by the laws, and to be enabled by those laws to do all that it is not absolutely necessary for the welfare of society he should be restrained from doing: — nor does it matter whether the government is called despotism, or monarchy, or republic; wherever arbitrary power exists, there is tyranny. For this reason it was that Mr. Fox said, in the height of the French revolution, “I dislike absolute monarchy, I dislike absolute aristocracy, I dislike absolute democracy.”

All these kinds of government leave the passions of man their full sway, and are consequently marked with injustice and oppression towards individual members of the community.

The most celebrated governments of ancient and modern times which have succeeded best in combining liberty with order, are Sparta, Rome, and England. Of these I have no hesitation in saying England, since 1688, is the most perfect. Indeed, it is evident to any one who reads the history of Sparta and Rome, that their institutions were intended for small communities, contained in the neighbourhood of a single city, and that the very force and strength which their form of government produced, tended, by increasing the commonwealth, to destroy the laws and manners which gave them birth. Not so with England; she does not reject wealth; she does not reject commerce; she does not even reject extended empire from the plan of her constitution; she rejects nothing but continental greatness, and an overgrown military establishment.

Nor can the United States of America be fairly quoted as an example against me. Whether she be more or less happy than England, her standing in the world is not yet such as to enable her to draw any triumph from the comparison of her institutions with those of other nations. Since she first conquered her independence she has been as little exposed to the internal dangers arising from foreign war as the republic of San Marino. She has had a continent to spread in, and a huge wilderness to receive the unquiet and fermenting spirits among her people. Each state has governed itself with as little difficulty as the Quarter Sessions in England regulate the county expenses; her congress has carried on war and negociation without the smallest apprehension of conquest. It is when the Republic, weary of peace and prosperity shall measure her new forces, and sigh for greatness and glory; when a national debt and a national army shall be created by the will of

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## CHAPTER I.

FIRST PRINCIPLES OF THE ENGLISH GOVERNMENT  
AND CONSTITUTION.

It is now the generally received opinion, and I think a probable opinion, that to the provisions of that reign (*viz.* of Henry the Seventh) we are to refer the origin, both of the unlimited power of the Tudors, and of the liberties wrested by our ancestors from the Stuarts; that tyranny was their immediate, and liberty their remote consequence; but he must have great confidence in his own sagacity, who can satisfy himself, that, unaided by subsequent events, he could from a consideration of the causes have foreseen the succession of effects so different.

Fox's *History of James II.*

It would undoubtedly have required a sagacity of no ordinary kind to have predicted, at the commencement of the arbitrary sway of the house of Tudor, the course of weak misrule and daring opposition, — of fierce contention, and not less cruel victory, which, marking with a line of blood the history of the

Stuart dynasty, at length ended in a peaceable revolution, and the establishment of regular liberty. But those who have seen the harvest can have no doubt that the seed was in the ground; and at this day it ought to be within our power to point out what were the elements of freedom in the state of England, during the reign of the Tudors, which have been since developed in her matchless constitution. Among them, we may, without hesitation, enumerate the following circumstances.

In the first place, the sovereignty of England did not reside in the King solely. All matters of great state importance were made subjects of deliberation in the King's high court of Parliament, which was called together expressly for that purpose. In case of war, it was the business of that assembly to consider of means for carrying it on: if the succession was disputed, or a regency required, an appeal was made to their judgment; and all laws intended to be permanently binding on the people received the sanction of their authority.

Nor did the princes of the house of Tudor attempt by any means to diminish or undervalue the importance of parliament. The crown of Henry the Seventh rested on a parliamentary act. Henry the Eighth repeatedly employed the name, and acknowledged the power of Parliament to change the succession. In the reign of Elizabeth, to say that the queen by the authority of Parliament had not power to dispose of the succession to the crown was made high treason during her life, and a misdemeanor with forfeiture of goods and chattels after her decease. Thus, however arbitrary the acts of these sovereigns, nothing was taken from the reverence due to the Parliament, the great council of the king, the grand inquest of the nation, and the highest court in the kingdom. The power given to Henry the Eighth, to issue proclamations equal in validity to laws, was indeed a direct blow to parliamentary government. But this act was in force only eight years, and contained a proviso that these proclamations should not be con-

trary to the established laws of the realm. During the reigns of Mary and Elizabeth, the Parliament, however subservient, was yet a principal instrument in carrying on the government. Hence arose a necessity, not indeed that a King of England should relinquish all hope of exercising tyrannical power, but that, if successful he must have his Lords and Commons accomplices in his tyranny. If these bodies therefore should ever claim that share in the state which the laws allowed them, or if they should refuse their support to the measures of the crown, the King must either submit to their claims, or by discontinuing parliaments, give fair warning to the people that the form of government was changed.

Secondly. The nobility were not separated from the people by odious distinctions, like the other feudal nobility of Europe. Various causes have been assigned for this difference ; without discussing them, I shall content myself with stating the fact. It would not be correct to suppose, however, that the feudal

system has not existed in England in a very odious shape. After the Conquest, the feudal tenure seems to have been adopted by all the principal landholders of England, in a great council held in the year 1086.\* Wardships, liveries, primer seisins, and ouster-lemain, values and forfeitures of marriage, fines for alienation, tenures by homage, knight-service and escuage, as well as aids for marrying the King's daughter, and knighting his son, all ligaments of the feudal system, are enumerated as part of the law of England, by the act of Charles II., which abolishes them. Happily, however, the system was not allowed to throw its roots very deep in the soil. A practice, which was growing general, of sub-infeudations, or granting inferior feuds by the mesne lords, with the same conditions as the chief, was restrained by the act of *Quia emptores* (18 Edw. I.) which directs that upon all sales, or grants of land in fee, the sub-tenant shall hold, not of the immediate, but of the superior lord.

A corrective to the tyranny of the feudal system was also to be found in the constitution of our county courts, the cradle of our liberties, in which are to be found the origin of our juries, and the model of our parliaments. Here the free tenants met to do justice between man and man; and here, it is probable, they deliberated on the means of affording the assistance they were bound to give, to defend their country against an enemy.

Thus much with respect to the free tenants. The state of the villeins is, perhaps, a subject of still more importance. The main difference between the two classes was this. The free tenant held his land, on condition of performing certain fixed services; the villein also frequently held land, but was bound to perform services, base in their nature, and generally undefined in their extent. Here was real servitude. How soon it began to be abrogated we know not, but we are told by Sir Thomas Smith, who was secretary to Edward VI. and Queen

Elizabeth, that in all his time he never knew any instance of a villein in gross, that is, of a villein transferable by sale, and not attached to the soil, in the kingdom; and that the few villeins attached to the soil, who remained, were such only as had belonged to bishops, monasteries, and other ecclesiastical corporations. The last claim of villenage recorded in our courts, was in the fifteenth year of James I. This great change, which had been silently operating in the condition of the people of England, is probably to be attributed to various causes,—the absence of foreign armies,—the necessity of conciliating the people during the civil wars,—and above all, the inherent justice and piety of the nation.

There were several ways in which a villein attached to the soil could obtain his freedom. He might be manumitted. Or if his lord brought an action against him, it was supposed to allow his freedom. Or if he went into a town and settled there, he, in a certain

time, enjoyed its immunities, and became free. Or, lastly, if he could show that, for time out of mind, he and his ancestors had been registered in the roll of the Lord's court, as having possession of the land he held, he obtained a prescriptive right against his lord. This was done by producing a copy of the court-roll, and hence the term copyholder. It has been supposed by some that copyhold was known before the Conquest. At whatever time it originated, the early prevalence of freedom is nobly characteristic of the English nation. Villenage was known in France till near the end of the eighteenth century; in Spain it is newly abolished; in Germany it is not extinct; in Russia it is in full vigour. But the spirit of the English people, and the equality of the common-law have always been a just corrective of the degrading institutions and customs imported from other countries. Magna Charta itself is a noble and singular proof of the sympathy then existing between the barons and the people of England. Philippe de

Comines speaks of the humanity with which the nobility treated the people in the civil wars. It would seem Englishmen have always felt that, if the order of civil society required the relations of superior and inferior ranks, nature conferred feelings and capacities with impartial justice upon all.

Intimately connected with this spirit, is the absence of any distinction between gentleman and *roturier*. Sir Thomas Smith is perhaps the first author who takes notice of the difference of the title of gentleman in England and on the Continent. I subjoin an extract from his work.— “ Ordinarily the King doth only make knights and create barons, or higher degrees; for as for gentlemen, they be made good cheap in England. For whosoever studieth the laws of the realm, who studieth in the universities, who professeth liberal sciences, and, to be short, who can live idly and without manual labour, and will bear the port, charge, and countenance of a gentleman, he shall be called Master, for that is the

title which men give to esquires and other gentlemen, and shall be taken for a gentleman: for true it is with us as is said, *Tanti eris alius quanti tibi feceris*; and, if need be, a king of heralds shall also give him, for money, arms newly made and invented, the title whereof shall pretend to have been found by the said herald in perusing and viewing of old registers, where his ancestors, in times past, had been recorded to bear the same. \* \* \* A man may make doubt and question whether this manner of making gentlemen is to be allowed or no; and for my part I am of that opinion, that it is not amiss. For, first, the prince looseth nothing by it, as he should do, if it were as in France; for the yeoman or husbandman is no more subject to taile or tax in England than the gentleman: no, in every payment to the King, the gentleman is more charged, which he beareth the gladlier, and dareth not gainsay for to save and keep his honour and reputation.”\* — “The law,” says

\* De Republicâ Anglorum, lib. i. c. 20 & 21.

Mr. Hallam, “ has never taken notice of gentlemen.\* From the reign of Henry III., at least, the legal equality of all ranks below the peerage was, to every essential purpose, as complete as at present. Compare two writers nearly contemporary, — Bracton with Beau-manoir, and mark how the customs of England and France are distinguishable in this respect. The Frenchman ranges the people under three divisions,—the noble, the free, and the ser-vile ; our countryman has no generic class, but freedom and villenage. No restraint seems ever to have lain upon marriage. The pur-chase of land held by knight-service was always open to all freemen. From the begin-ning our law has been no respecter of persons. It screens not the gentleman of ancient lineage from the judgment of an ordinary jury, nor from ignominious punishment. It

\* The statute of Merton certainly affords an exception to this remark, when it speaks of the wards of noblemen being disparaged by marrying *villains, or others, as burgesses*. But the same act allows that such marriages, if made by the ward's consent, after fourteen years of age, are legal.—J. R.

confers not, nor ever did confer, those unjust immunities from public burthens which the superior orders arrogated to themselves upon the Continent. Thus, while the privileges of our peers, as hereditary legislators of a free people, are incomparably more valuable and dignified, they are far less invidious in their exercise, than those of any other nobility in Europe. It is, I am firmly persuaded, to this peculiarly democratical character of the English monarchy, that we are indebted for its long permanence, its regular improvement, and its present vigour. It is a singular, a providential circumstance, that, in an age when the gradual march of civilization and commerce was so little foreseen, our ancestors, deviating from the usages of neighbouring countries, should, as if deliberately, have guarded against that expansive force, which in bursting through obstacles improvidently opposed, has scattered havoc over Europe.”\*

Thus we see the nobility of England formed

\* Middle ages, vol. ii. p. 19

no separate caste. Their sons, not excepting the eldest, were in all respects, *part and parcel* of the commons of the land. It was decided, by votes of Parliament, both in the reign of Henry VIII. and in that of Elizabeth, that the eldest son of the Earl of Bedford was entitled to sit in the House of Commons. No decision could well be more auspicious. The heirs to a peerage, instead of feeling that petty pride, and indulging that insolent ignorance, which high rank has so great a tendency to breed, were members of an assembly in which they appeared as, or deliberated with, the citizens and burgesses of the land: they thus imbibed the feelings, and became acquainted with the wants of the people. When a struggle was to be made for freedom, many of them sympathised in the cause; few quitted their country; and thus their importance survived even the democratic revolution of 1649.

Thirdly. The last and the greatest element of freedom which existed in England, was the constitution of her House of Commons,

Some persons, indeed, have considered that all virtue was taken away from that body by a law of Henry VI. which limits the right of voting in counties to 40s. freeholders; and have dated the fall of the liberties of England from the period when villenage was gradually giving way to freedom. To such an opinion I certainly do not subscribe. Nor is it my intention to enter here into any controversy respecting the origin of our representation; a discussion belonging properly to an earlier period than that we are now speaking of. The points to which I shall now confine my remarks are the Principle of Representation, and the Nature of our own Representation generally.

It has been observed to me, that in the ancient commonwealths, the people, who decided on public affairs, were all of a higher order than those of the poorer class, who in England read newspapers and take an interest in political questions. But this is a complete mistake. Slaves, it is true, had nothing to do

no separate caste. Their sons, not excepting the eldest, were in all respects, *part and parcel* of the commons of the land. It was decided, by votes of Parliament, both in the reign of Henry VIII. and in that of Elizabeth, that the eldest son of the Earl of Bedford was entitled to sit in the House of Commons. No decision could well be more auspicious. The heirs to a peerage, instead of feeling that petty pride, and indulging that insolent ignorance, which high rank has so great a tendency to breed, were members of an assembly in which they appeared as, or deliberated with, the citizens and burgesses of the land : they thus imbibed the feelings, and became acquainted with the wants of the people. When a struggle was to be made for freedom, many of them sympathised in the cause; few quitted their country; and thus their importance survived even the democratic revolution of 1649.

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not entirely, overcomes these obstacles. A certain number of persons are chosen by the people at large, whose commission it is to watch over the interests of the community. Consisting naturally and inevitably of persons of some fortune and education, they are not so likely to be borne away by the torrent of passion, as the general, unsifted mass of the nation. Depending upon the people ultimately for their power, they are not so liable to act from personal interest, or a corporation spirit, as a body of men whose power is attached for ever to their rank in the state. If the representative assembly is entrusted for no very short period with the concerns of the people ; and if the members of it are always capable of being re-elected, it will evidently become enlightened on all the interests, and capable of discussing, with ability, all the great move-

---

— My soul aks  
To know, when two authorities are up,  
Neither supreme, how soon confusion  
May enter 'twixt the gap of both.

*Coriolanus, Act 3.*

ments of the state. The most powerful minds in the nation will be brought to bear on any important measure of policy or justice, and, at the same time, the humblest individual in the country is sure, through some channel or other, to find a hearing for his injuries, in the presence of the representatives of the whole people.

It is essential to remark, that in the English House of Commons the knights sate in the same assembly with the citizens and burgesses. There are few things in our early constitution of more importance than this. Cities and towns, however necessary their assistance for granting aids and taxes, are not likely to obtain, in a feudal country, that kind of respect from the other bodies in the state which would enable them to claim a large share of political power. The separation of the mercantile class from the rest of the community, was perhaps one of the chief causes of the failure of the Spanish, and other early constitutions similar to our own. But in England, the

knights, who represented the landed force of the whole country, gave a stability and compactness to the frame of the House of Commons, and placed it on a broad foundation, not easily shaken by any king who should attempt its overthrow.

The sitting of the knights, citizens, and burgesses in one assembly, was perhaps partly owing to that equality of civil rights, which has before been mentioned; no imaginary distinction separated the country knight of ancient lineage from the city merchant of recent fortune. It was not, however, always the rule, and has rather been established by one of those happy unions of fortune and counsel to which the English constitution owes so much; — I know not, indeed, if I ought to call it fortune. It was a part of the practical wisdom of our ancestors, to alter and vary the form of our institutions as they went on; to suit them to the circumstances of the time, and reform them according to the dictates of experience. They never

ceased to work upon our frame of government, as a sculptor fashions the model of a favourite statue. It is an art that is now seldom used, and the disuse has been attended with evils of the most alarming magnitude.

## CHAP. II.

## HENRY THE SEVENTH.

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This King, to speak of him in terms equal to his deserving, was one of the best sort of wonders, a wonder for wise men. He had parts, both in his virtues and his fortune, not so fit for a common-place as for observation.

LORD BACON, *Life and Reign of Henry VII.*

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THE battle of Bosworth Field put an end to the long and destructive contest which had wasted the blood, and disfigured the fair face of England, in the quarrel between the houses of York and Lancaster. Such a contention is little less disgraceful to mankind than it would have been to have made the white and red roses the subject, instead of the symbols, of hostility, and affords but too much ground for the assertion of a democratic writer, that hereditary right has caused as long and as sanguinary wars as elective monarchy.

Henry, who was crowned in the field of battle, lost no time in proving he was as well able to keep, as to acquire a throne. He immediately summoned a parliament, and obtained from them the passing of a statute, not declaring that he was lawful heir to the crown; not asserting the right of conquest, or of election; but enacting “that the inheritance of the crown should rest, remain, and abide in the king.” He procured this statute to be confirmed by the pope’s bull. In the same spirit of peace and moderation, he caused many exceptions to be inserted in the acts, for attainting the adherents of King Richard. A few years afterward he procured a law to be passed, declaring that no one should be called in question for obeying a king *de facto*. He thus quieted the minds of his subjects, and added more to the stability of his government, than he could possibly have done by displaying what Bacon calls the wreath of five; to wit, his own descent, and that of his Queen, the claim of conquest, and the authorities,

parliamentary and papal. Among these titles, that of the house of York seems to have given him little satisfaction, and he took care not to crown his queen for a considerable time after his marriage. Indeed, it is certain that, whether from prejudice or policy, his Lancastrian partialities influenced his conduct during the whole of his reign.

One of Henry's first endeavours was to procure a law to prevent conspiracies among the great, and riots among the people. In a parliament assembled in the third year of this reign, Morton, Archbishop of Canterbury and Chancellor of the kingdom, spoke the following words : — “ His Grace (i. e. the King) saith, that it is not the blood spilt in the field that will save the blood in the city : nor the marshal's sword that will set this kingdom in perfect peace ; but that the true way is to stop the seeds of sedition and rebellion at the beginnings, and for that purpose to devise, confirm, and quicken good and wholesome laws against riots and unlawful assemblies of people,

struck any one at this time; and Lord Bacon is lavish in his praises of the Star-Chamber, calling it one of the sagest and noblest institutions of this kingdom. But long civil war induces a people to surrender liberty for peace; as long peace induces them to encounter even civil war for liberty. One of the next acts of the Parliament was the sanction of an arbitrary tax. This species of tax, known by the name of Benevolence, had been raised by Edward IV., without the consent of Parliament, and abolished by Richard III. in a very remarkable statute. It was now revived by act of Parliament on the occasion of a war with France. But the real object was to amass money; for Henry had scarcely landed in France before he concluded a peace, by which he was to receive 745,000 ducats (about 186,000*l.* sterling) and a tribute of 25 crowns yearly.

This reign was much disturbed by rebellion. Attachment to the house of York, and the burthen of taxes seem to have been the chief

causes of discontent. Bacon attributes an insurrection in the North to respect for the memory of Richard III., a proof that his government, in that part of the kingdom, had not been very oppressive.

The chief end of Henry's administration was to restrain the inordinate power of the great barons. Two laws enacted for this purpose, the one facilitating the sale of entailed lands by what is called breaking an entail, and another suppressing retainers, were, with other statutes and the extensive authority given to the Star-Chamber, eminently conducive to the object for which they were framed. In thus directing his policy, Henry adopted views prompted indeed by his own jealous temper, but which ultimately were beneficial to his country. The course of justice became steady, disorders were suppressed, the tranquillity of the whole country was secured; and the Commons, being no longer oppressed by feudal power, or distracted by domestic war, were enabled to acquire, first wealth, then import-

ance, and lastly freedom. Bacon, it is true, attributes many of the disturbances which still afflicted the country during this reign to the neglect and distrust of the nobility shown by the King.

The fault, however, was on the right side. Had not Henry governed his nobles with a strong hand, a powerful oligarchy might have perpetuated in this country the barbarous licence of Poland. The arts, the letters, and the strength of the kingdom, under the sway of Elizabeth, are in great part to be attributed to the policy of her grandfather.

The last years of Henry were disgraced by the cruel and arbitrary exactions of which Empson and Dudley were the vile and execrated instruments. His successor, with a generous magnanimity not uncommon in the world, gave up the offenders, and profited by the offence; sent the collectors to the scaffold, and kept the money in his treasury.

## CHAP. III.

## HENRY THE EIGHTH.

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When love could teach a monarch to be wise,  
And gospel light first dawn'd from Bullen's eyes.

GRAY.

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THE reign of Henry the Eighth is justly esteemed the most arbitrary in our annals. Yet it affords many curious precedents of the authority of Parliament. One of the first of these is the act granting tonnage and poundage. The King had levied these duties for some time by his own prerogative. But in the 6th year of his reign, he met with resistance, and was obliged to apply to Parliament for their sanction. The act that was passed is curious. It condemns those who had resisted, but at

the same time grants to the king, *de novo*, the duties of tonnage and poundage. Upon the whole, this precedent, though inconsistent with itself, makes against the power assumed by the crown. For if the king had the right to raise those duties, the act would have been merely declaratory. The making a new enactment proves, with whatever terms it might be qualified, that the King was not previously entitled by his prerogative to levy tonnage and poundage, and that his orders on this subject might be resisted with impunity. So, indeed, the act seems to have been understood ; for at the commencement of the four following reigns, we find the duties in question regularly granted by Parliament, in the first year of the reign\*.

\* Statutes 1 Edw. VI. c. 15. 1 Mary, st. 2. c. 18., 1 Eliz. c. 20., 1 James, c. 55. By all these acts, tonnage and poundage are granted for life. They are all amongst the last acts of the session. Notwithstanding these statutes, Mr. Hume asserts, that Henry's "successors, for more than a century, persevered in the like irregular practice, if a practice may deserve that epithet, in which the whole nation acquiesced, and which gave no offence. But when Charles I. attempted to continue in the same course, which

Another remarkable precedent is afforded by an indiscreet step of Wolsey. Wishing to impose a very heavy tax, he proposed to go himself into the House of Commons, for the purpose of silencing, by his presence, all opposition. Many were disposed to resist his admission into the house; but when that point had been conceded, the Speaker, Sir Thomas More, opposed the opinion of the majority, that he should be admitted with a few followers only. The Speaker was of opinion that they should receive him “with all his pomp, with his maces, his pillars, his pole-axes, his cross, his hat, and the great seal

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had now received the sanction of so many generations, so much were the opinions of men altered, that a furious tempest was excited by it, and historians, partial or ignorant, still represent this measure as a most violent and unprecedented enormity in this unhappy prince.” And with reason. These duties were not granted to Charles, as they had been to his predecessors, and he attempted to revive the practice which was not permitted to Henry VIII. Where Mr. Hume finds, that Edward, Mary, Elizabeth, and James levied these duties, during the few months they were not in force, or whether he has not fallen into an error, in supposing they were levied before they were granted by parliament, I will not presume to determine.

too." The cardinal being thus admitted, made a long and eloquent oration against the King of France, declared that the king could not do otherwise than join with the Emperor against him, and demanded of the Commons the sum of 800,000*l.* as the estimated charge of the war. "At this request," as we are told by the great-grandson and biographer of Sir Thomas More, "the house were silent; and when the minister demanded some reasonable answer, every member held his peace. At last, the Speaker, falling on his knees, with much reverence, excused the silence of the house, abashed, as he said, at the sight of so noble a personage, who was able to amaze the wisest and most learned men in the realm; but with many probable arguments he endeavoured to show the cardinal that his coming thither was neither expedient nor agreeable to the ancient liberties of that house;" and, in conclusion, told him, "that except all the members could put their several thoughts into his head, he alone was unable, in so weighty

a matter, to give his grace a sufficient answer: Whereupon the cardinal, displeased with the Speaker, suddenly rose up in a rage and departed.” The result was, that a subsidy was granted, but much less than the cardinal had asked.

In 1526, Wolsey sent commissioners by his own authority to levy a sixth part of the goods of the laity, and a tenth part of the goods of the clergy; but the commissioners were resisted, and Henry was obliged to disavow his minister, and annul the commission.

Yet in the same reign in which so much spirit was shown, a magistrate of London was sent to the wars in Scotland, where he was soon after killed, because he had refused to contribute to a benevolence.\* What a confusion of law and custom! how uncertain the bounds of right and prerogative!

The arbitrary government of Henry, on every subject but that of taxes, is well known. In all his violations of law and justice he

\* Henry's History of England.

was strenuously supported by his Parliament. When he wished to rid himself of his wives, Parliament assisted him ; when he desired to put to death his prime-ministers, Parliament condemned them without a trial ; when at length he chose to make laws by his own will only, Parliament gave him authority to do so. It is no wonder, therefore, to find him holding high the privileges of Parliament. A curious instance of this occurs in the case of a Mr. Ferrers, a member of the house of commons, who was arrested for debt. The house immediately released him, and imprisoned those who had arrested him. Henry upon this occasion made the following speech to the house on the question of privilege :— “ He first commended their wisdom in maintaining the privileges of their house ; which he would not have infringed in any point. He alleged that he, being at the head of the Parliament, and attending in his own person in the business thereof, ought in reason to have privilege for himself and all his servants in attendance on

him. So that, if Ferrers had been no burgess, but only his servant, in respect of that he ought to have privilege as well as any other. For I understand," says he, "that you enjoy the same privilege, not only for yourselves, but even for your cooks and horse-keepers. My lord chancellor here present hath informed me, that when he was Speaker of the lower house, the cook of the temple was arrested in London, on an execution upon the statute of staple. And, because the said cook served the Speaker in that office, he was taken out of execution by the privilege of Parliament. Likewise the judges have informed us, that we at no time stand so high in our estate royal as in the time of Parliament; when we, as head, and you as members, are conjoined and knit together into one body politic; so that whatsoever is done or offered during that time against the meanest member of the house is judged as done against our own person and whole court of Parliament. The prerogative of which court is so great,

that, as our learned in the laws inform us, all acts and processes, coming out of any other inferior courts, must for that time cease and give place to the highest."

Thus did Henry exalt the power of the Parliament, which had so vigorously supported him. But it does not appear that in so doing they had gone beyond the wishes of their constituents. Henry seems upon the whole to have been a popular tyrant; and there is some truth in the remark of Mr. Hume that the English of this age, like eastern slaves, were inclined to admire those acts of violence and tyranny which were exercised over themselves, and at their own expence.

## CHAP. IV.

### THE REFORMATION.

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He that would do right to religion cannot take a more effectual course than by reconciling it with the happiness of mankind.

TILLOTSON.

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THE Reformation in England was by no means similar in its history to the great revolution of men's minds which took place in Switzerland, Scotland, and Germany. It was begun by the King, in consequence of his desire to put away his wife and marry another; and this quarrel was not only unconnected with the doctrine of Luther, but that doctrine was at the same time condemned, and its supporters capitally punished. Had the Pope been as complying as he had often been before,

Henry VIII. would have been, if not one of the most pure and holy saints, one of the most faithful and zealous servants that the church of Rome could boast of possessing. Even after the breach seemed irreparable, propositions were made from Rome, and were accepted by Henry\*, but as his messenger did not arrive on the day fixed, the Emperor's party in the Consistory took advantage of the failure of punctuality to obtain a vote closing the door upon reconciliation for ever. The messenger of the King of England arrived only two days too late to reconcile his master with the Pope, and arrest the progress of religious light in this country.

The breach with the Church of Rome would still not have led immediately to the Reformation, had not Cranmer, holding the high station of Archbishop of Canterbury, with Cromwel, many of the peers, and a large number of the educated class, endeavoured to conduct the nation, step by step, to abjure

\* Burnet's Hist. of Ref. v. i. p. 136.

the errors and superstitions of the Roman Catholic worship. At the same time, they were obliged, even for the sake of the cause they favoured, to retain many ceremonies to which the people were attached, and which the English reformers copied from the Roman church, as the Roman church had originally copied some of their ceremonies from the heathen worship.

The first step which Henry took, of his own accord, against the church of Rome after the divorce, was the dissolution of the monasteries. The motive which induced him to adopt this measure, was probably a spirit of rapacity ; for with all his power he found it a very difficult matter to squeeze money from his subjects. With the sum to be derived from the sale of the monasteries, he proposed to make harbours all round the coast of England; a plausible pretext, rather than a *bond fide* reason for his confiscations. Those of the nobility who had adopted the opinions of the reformers, gave willingly into the measure, and no doubt their

zeal was quickened by the share they got of the spoil. The abuses which prevailed in the monasteries were not, however, a groundless pretext. The relations of the visitors who were appointed by the King to reform the monasteries, and report their state, display grounds for believing that they were any thing rather than seminaries of piety and morality.\*

The next steps taken in the road of reformation were some directions respecting the worship of images and praying to saints, and, what was much more important, a permission to the people to read a translation of the Bible, in St. Paul's Church. The people flocked to the place, and one person was generally chosen to read aloud to the rest, till the bishop, alarmed at the concourse, forbade the practice, as a disturbance to the service of the church.

\* Burnet, Hist. of Ref. b. i. p. 196. Mr. Lingard, however, refuses credit to these charges: he observes with truth that they were *ex parte* statements to which the accused had no opportunity of replying. It would be difficult, on the other hand, to suppose all the facts alleged to be fabrications. Monks and nuns are not infallible or impeccable beings.

The destruction of some of the images exposed to the public several scandalous cheats.\*

The outset of the Reformation in England was marked by a more cruel and insupportable religious tyranny than had ever subsisted under the Papal dominion. In the times of popery, the articles of faith were placed in the custody of the priest; and the people received from him some knowledge of the doctrines of Christianity, some notion of the duties of morality, and an unbounded reverence for the authority and magnificence of the Church. But Henry VIII., after partly removing the veil of ignorance from the eyes of his people, required them not to go a single step farther than he himself did; and commanded the nation by act of parliament to believe six articles of faith therein laid down, and whatever else the King might choose to ordain.

To punish men for their opinions on speculative articles of belief, is one of the luxuries which tyranny has invented in modern times.

\* Note (A.) at the end of the volume.

Dionysius and Domitian knew nothing of it. It was enjoyed by Henry to its full extent. He was not, like Philip II. or Charles IX., merely the minister of bigotry, of which he was himself the disciple. He taught from his own mouth the opinions which were to regulate his subjects; he contained in his own breast the rule of orthodoxy; and he had the triumph of confuting the heretic whom he afterwards had the gratification to burn.

The religion established by Henry VIII. was so far from being the reformed church of Luther or of Calvin, that he prided himself, in maintaining the Roman Catholic faith after he had shaken off the supremacy of the Pope. His ordinances indeed vibrated for a short time between the old and the new religion, as he listened more to Cranmer or to Gardiner; but the law of the six articles, which contains the creed he finally imposed on his people, maintains and confirms all the leading articles of the Roman belief. They were as follows:

*First,* That, in the sacrament of the altar,

after the consecration, there remained no substance of bread and wine, but under these forms the natural body and blood of Christ were present. *Secondly*, That communion in both kinds was not necessary to salvation to all persons by the law of God. *Thirdly*, That priests after the order of priesthood might not marry by the law of God. *Fourthly*, That vows of chastity ought to be observed by the law of God. *Fifthly*, That the use of private masses ought to be continued; which, as it was agreeable to God's law, so men received great benefit by them. *Sixthly*, That auricular confession was expedient and necessary, and ought to be retained in the Church.

The actual Reformation in England was the work of the Duke of Somerset, Protector, in the early part of the reign of Edward VI. In the first year of that reign, he sent visitors to persuade the people not to pray to saints, to procure that images should be broken; and to exhort the nation generally, to leave off the use of the mass, dirges, and prayers in a foreign

language. By act of Parliament in the same year he prohibited speaking against giving the sacrament in both kinds ; in that and the two following years he established the liturgy of the church of England. The law of the six articles was repealed. The reformation in England was thus made by the crown and the aristocracy. The people, though agitated by religious disputes, seem to have been hardly ripe for so great a revolution. Insurrections of a serious nature took place in Devonshire, Norfolk, and elsewhere. The preaching of the Roman Catholic priesthood produced so strong an impression, that all the means of authority were put in motion to counteract it. The clergy were first ordered not to preach out of their parishes without a license, which of course was granted only to the favoured sect; and this not proving sufficient, preaching was altogether prohibited \*; — a singular step in the history of the Reformation !

On the other hand, Mary, on succeeding to

\* Burnet, Hist. Ref.

the throne, found it an easy matter to revive the ancient worship. Nor did she hesitate to call frequent new parliaments, who each went beyond the former in the road of reconciliation. The first refused to re-establish the law of the six articles ; but only one year afterwards, the nation was formally reconciled to the church of Rome, and the parliament thanked the Pope for pardoning their long heresy. He said, with equal candour and truth, that he ought to thank them for putting a rich country again under his dominion.

## CHAP. V.

## QUEEN ELIZABETH.

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Sur ce sanglant théâtre, où cent heros périrent,  
 Sur ce trône glissant, dont cent rois descendirent,  
 Une femme, à ses pieds enchaînant les destins,  
 De l'éclat de son règne étonnait les humains.  
 C'était Elizabeth; elle dont la prudence,  
 De l'Europe, à son choix fit pencher la balance,  
 Et fit aimer son joug à l'Anglois indompté,  
 Qui ne peut ni servir, ni vivre en liberté.  
 Ses peuples sous son règne ont oublié leurs pertes;  
 De leurs troupeaux féconds leurs plaines sont couvertes,  
 Les guérets de leurs blés, les mers de leurs vaisseaux,  
 Ils sont craints sur la terre, ils sont rois sur les eaux.  
 Leur flotte imperieuse, asservissant Neptune,  
 Des bouts de l'univers appelle la Fortune,  
 Londres jadis barbare est le centre des arts,  
 Le magasin du monde, et le temple de Mars.

LA HENRIADE, chant 1.

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QUEEN Elizabeth is the greatest of English, perhaps of all modern sovereigns. In a period remarkable for long and sanguinary wars, she made her name respected abroad, without a waste of blood or treasure ; and in a time

of great political ferment, she maintained the most absolute authority at home, without any loss of the affections of her people. She obtained glory without conquest, and unlimited power without odium.

The means by which results so extraordinary were obtained, comprise all the springs of her foreign and domestic policy. Three principal sources of her fame and success, however, may be discerned.

First. She made herself the head of the Protestant interest in Europe. To do this, it was not necessary to place herself in the front of a confederacy of belligerent powers. It was sufficient so give the sanction of the name of England, a rich and united kingdom, to the cause which she supported. The spirit and enterprise of her subjects, with some assistance from her, did the rest. By this policy, also, she pleased the popular feeling of her kingdom, and opened a channel in which all the restless action of her nobility and gentry might be borne out and find a current. The national fame

was likewise a gainer by the reputation acquired by English knights and soldiers, in fighting against the league in France, and Phillip II. in the Netherlands. The country assumed her proper station in the van of the defenders of liberty ; the blood of Sir Philip Sidney was shed in the cause of the freedom of the world ; and tyrants trembled at the name of Elizabeth and of England.

Secondly. She took care not to ask too much money of the people. Her treaties with Henry IV. resemble more the hard bargain of a Swiss Canton than the generous alliance of a powerful and friendly sovereign. She well knew that Parliament held the purse, and must, therefore, become absolute master of a distressed or expensive sovereign. In her situation economy was power. Happy would it have been for Leo X., for Charles I., for Louis XVI., if they and their immediate predecessors had been aware of this key-stone of their fate ! The Reformation, the civil wars of England, and the revolution in France, had

their rise in disordered finances. Men will readily submit to be oppressed, but will not easily consent to pay a dear price for the oppression.

Thirdly. She yielded to the popular voice, and cultivated popular favour, whenever it could be done with dignity and safety. She could be severe and kind by turns. Thus, having at one time excited great murmurs among the house of commons by forbidding liberty of speech, she soon thought proper to revoke her commands. But nothing shows her policy better than her conduct respecting monopolies. There was hardly any article of which a monopoly was not granted by the Crown. The evil grew so grievous that even Elizabeth's house of commons echoed with angry speeches and universal complaint. The Queen instantly yielded. She did not acknowledge that the debates of the House of Commons had had any weight with her, but she informed them, through her secretary of state, that she consented to quash those mono-

polies that were illegal, and to submit to an enquiry with respect to the rest. Secretary Cecil made an apology to the House for having compared them to a school, and said, he by no means intended to deny the freedom of speech.\*

In her manners also the Queen took care to show the greatest confidence in the people. No one knew better how to buy the nation's heart with a phrase, to declare on occasion, that her treasure was better in her subjects' purses than in her own coffers, and that her best guards were the affections of her people. She was well aware that nothing is so pleasing as the condescension of supreme power. She therefore displayed her greatness by the pomp of her state, and her goodness by the affability of her language.

By such means Queen Elizabeth was enabled to maintain a stable authority over an unquiet people in a restless age. France was distracted by civil war; the king of Spain was employed in a bootless and bloody quarrel with

\* Note (B) at the end of the volume.

his insurgent subjects in the Netherlands and Holland ; Germany was shaken in every limb by the Reformation ; but the Queen of England reaped the reward of prudence and courage in the tranquillity and affectionate obedience of her kingdom and people. Her power was enormous. When the Commons remonstrated, she speedily dissolved them ; at one time she told them not to meddle in affairs of state : still less did she permit any proposal of alteration in the church ; and she repeatedly imprisoned, or procured to be imprisoned, those who gainsayed her high pleasure in these matters.\* She dispensed with those laws which were unpalatable to her, and regulated the behaviour of her people by ordinance and arbitrary mandate. She forbade the cultivation of woad, as offensive to her royal nostrils. The court of Star-Chamber, and the court of High Commission, not being sufficiently arbitrary, it was ordered that every person who imported forbidden books, or

\* Note (C) at the end of the volume.

committed other offences specified, should be punished by martial law. Those who employed the press as an organ of discussion were speedily condemned. Mr. John Udall, a puritan minister, charged with having written "a slanderous and infamous libel against the Queen's Majesty," was tried for a felony, and convicted. The sentence was never executed, but the poor man, after several years' confinement, died in prison. The judge told the jury to find him only author of the book, for the offence of writing it had been already determined to be felony by the judges. A gentleman who had written a book to dissuade the Queen from marrying a French prince, was sentenced by a law of Queen Mary to lose his hand. A puritan of the name of Penry was condemned and executed for seditious papers found in his pocket. Struck by these arbitrary proceedings, Mr. Hume has compared the government of Elizabeth to the modern government of Turkey, and remarking, that in both cases the sovereign was de-

THEIR EXCELLENCIES

period of the power of ~~destroying~~ ~~any~~ ~~one~~ ~~subject~~, he asserts, ~~the~~ ~~King~~ ~~is~~ ~~not~~ ~~more~~ ~~than~~ ~~absolute~~. ~~which~~ ~~is~~ ~~not~~ ~~true~~ ~~in~~ ~~any~~ ~~leges~~, ~~appears~~ ~~under~~ ~~no~~ ~~protection~~ ~~of~~ ~~them~~. It is needless to say ~~more~~ ~~on~~ ~~the~~ ~~subject~~, as ~~history~~ ~~and~~ ~~a~~ ~~few~~ ~~old~~ ~~books~~ ~~will~~ ~~inform~~ ~~you~~ ~~that~~ ~~the~~ ~~King~~ ~~is~~ ~~ever~~ ~~more~~ ~~absolute~~ ~~than~~ ~~a~~ ~~Turkish~~ ~~despot~~; ~~and~~ ~~commonly~~ ~~provided~~ ~~in~~ ~~the~~ ~~Statute~~ ~~of~~ ~~the~~ ~~extinction~~ ~~of~~ ~~his~~ ~~power~~, ~~in~~ ~~the~~ ~~English~~ ~~House~~ ~~of~~ ~~Commons~~ ~~in~~ ~~the~~ ~~reign~~ ~~of~~ ~~Elizabeth~~, ~~to~~ ~~render~~ ~~the~~ ~~same~~ ~~impracticable~~. ~~For~~ ~~Queen~~ ~~Elizabeth~~ ~~ever~~ ~~put~~ ~~it~~ ~~into~~ ~~the~~ ~~hands~~ ~~of~~ ~~those~~ ~~monopolies~~ ~~which~~ ~~now~~, ~~it~~ ~~will~~ ~~be~~ ~~seen~~ ~~their~~ ~~ill-gotten~~ ~~wealth~~. ~~It~~ ~~is~~ ~~the~~ ~~authority~~ ~~of~~ ~~the~~ ~~House~~ ~~of~~ ~~Commons~~ ~~that~~ ~~the~~ ~~advances~~ ~~during~~ ~~the~~ ~~reign~~ ~~of~~ ~~Elizabeth~~. ~~The~~ ~~very~~ ~~weight~~ ~~of~~ ~~the~~ ~~power~~ ~~then~~ ~~was~~ ~~sufficient~~ ~~to~~ ~~conquer~~ ~~their~~ ~~remonstrances~~ ~~showed~~ ~~the~~ ~~strength~~ ~~of~~ ~~their~~ ~~resistance~~. ~~The~~ ~~decrease~~ ~~of~~ ~~the~~ ~~House~~ ~~of~~ ~~Commons~~ ~~during~~ ~~the~~ ~~reign~~, ~~till~~ ~~a~~ ~~quarter~~ ~~and~~ ~~a~~ ~~half~~ ~~of~~ ~~the~~ ~~old~~ ~~parliamentary~~ ~~money~~. ~~An~~ ~~adverse~~ ~~observer~~ ~~of~~ ~~the~~ ~~country~~ ~~at~~ ~~that~~ ~~period~~, ~~would~~ ~~scarcely~~ ~~have~~ ~~been~~ ~~in~~ ~~doubt~~.

that the force of free institutions was suspended, but not destroyed, by the personal influence of Elizabeth, and while he acknowledged that no sovereign ever carried the art of reigning farther, he would perceive that the nation had granted her a lease for life of arbitrary power, but had not alienated for ever the inheritance of freedom.

It was happy for the country that Queen Elizabeth found it her interest to embrace the Protestant religion, and that by the foolish as well as atrocious plots of the Roman Catholics, she was forced to cultivate still more strongly the affections of the Protestant party. Boast as we may of our constitution, had Queen Elizabeth been a Roman Catholic, or James the second a Protestant, there would have been no liberty in England.

## CHAP. VI.

## JAMES THE FIRST.

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Every one pointed to her (Queen Elizabeth's) white hairs, and said with that peaceable Leontius, ‘When this snow melteth, there will be a flood.’

HALL’s *Sermons*.

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DURING the latter years of Elizabeth, all classes of people were impatient for the accession of her successor. There is nothing so irksome to mankind as continued demands for a long series of years from the same person upon their admiration and their gratitude. In proportion as the novelty wears out, weariness succeeds to wonder, and envy to weariness; the many, like fastidious critics, begin to find faults where they saw nothing but beauties before, and some are angry that there are so few faults to find. The young love to censure what the old extravagantly praised, and the

giddy are disgusted with the monotony of excellence. There might perhaps, however, be other causes why the English nation should desire the reign of James. A new spirit had arisen during the latter years of Elizabeth, both in religion and politics. A large party, known by the name of Puritans, had been formed, or rather increased and united, who aimed at a further reformation in the church. The Romish ceremonies, which had been preserved in our forms of worship, found no pardon in the minds of this stern sect ; and had they been able to execute their wishes, the power and revenues of the bishops would have been submitted to their crucible. Their bold and uncompromising principles led them also to free principles of government ; their understandings quickly stripped a king of his divinity, and their hearts raised the subject to a level with the sovereign. Besides the progress of these opinions, a new standard of political right had been introduced by the general study of Greek and Roman authors.

Not only had the glories of the ancient republics kindled a flame in the breasts of generous men, but the diffusion of classical knowledge had prepared the upper classes of society to require more enlightened methods of proceeding, and a more regular distribution of powers and privileges than had ever before been found necessary. The community was advanced in wealth, in arts, in literature and in morals. Above all, the Reformation was a perpetual source of enquiry and discussion ; the minds of men had taken a start towards improvement, and nothing could stop their course.

The reforms which this new world manifestly demanded, were naturally postponed till after the death of Elizabeth. Her age and her reputation merited, her vigour and experience enjoined forbearance. But James, a foreign king, without reputation of glory or of firmness, did not enforce by his character the same submission. A resolution seems to have been taken to insist upon all the ancient pri-

vileges of parliament, together with all the legal liberties of the subject; and if these should be found incompatible with the old prerogatives of the crown, or the new pretensions of the Tudor dynasty, to make the King yield to his people, not the people to the King.

James soon had ample occasion to remark the disposition of his subjects. Not all the rejoicing which attended his march, nor the new honours which he so lavishly threw away, could disguise the truth. A petition from upwards of a thousand clergymen of the puritan persuasion, was presented to the king on his road to London, praying for “a reformation in the church service, ministry, livings, and discipline.” He issued writs for the calling of a Parliament, accompanied with instructions to the people what kind of persons they should elect, commanding them not to chuse outlaws, and bidding them send the returns to his court of chancery, there to be examined and judged. In pursuance of these instructions, the election of a Sir Francis

Goodwin, chosen for the county of Buckingham, an outlaw, was declared, to be void; a new writ was issued from the chancery, and Sir John Fortescue was returned in his room. The Commons declared the election of Sir Francis Goodwin to be valid, and that all matters concerning the election of members of Parliament were cognizable in the House of Commons only. This had been an old subject of dispute with Queen Elizabeth; the precedents were assertions on both sides, and no decisive conclusion. The Commons had voted that the "discussing and adjudging of such like differences belonged only to the House;" and had passed a resolution that outlaws might be elected: the Judges had declared they could not, and Queen Elizabeth had complained to her last House of Commons that outlaws were admitted. James, after contesting the point, proposed that both Goodwin and Fortescue should be set aside, and a new writ should be issued by the warrant of the House. The

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Forced loans, arbitrary taxes from private persons, and new monopolies supplied the wants of his treasury in the interval. At length, in the year 1620, a parliament met, to which every Englishman ought to look back with reverence. Having first voted the King two subsidies, and having discouraged all recurrence to past complaints, they set themselves vigorously to examine the present grievances of the subject. James adjourned them, and imprisoned Sir Edwin Sandys, one of their most useful members. Undismayed by this step, they petitioned the King, on his next meeting, to defend his son-in-law the Elector Palatine against the Catholic interest of Europe, to break off the match of his son with Spain, and to turn his sword against that formidable power. James threatened the Commons with punishment: they maintained their privileges: he told them they were derived “from the grace and permission of our ancestors and us.” To this pretension they returned the following memorable answer:—

“ The Commons, now assembled in Parliament, being justly occasioned thereunto, concerning sundry liberties, franchises, privileges, and jurisdictions of Parliament, do make this protestation following : — That the liberties, franchises, privileges, and jurisdictions of Parliament are the antient and undoubted birth-right and inheritance of the subjects of England ; and the arduous and urgent affairs concerning the King, state, and the defence of the realm, and of the church of England, and the making and maintenance of laws, and redress of mischiefs and grievances, which daily happen within this realm, are proper subjects and matter of counsel and debate in Parliament ; and that in the handling and proceeding of those businesses, every member of the House hath, and of right ought to have, freedom of speech, to propound, treat, reason, and bring to conclusion the same : that the Commons in Parliament have like liberty and freedom to treat of those matters, in such order, as in their judgments shall seem fittest :

and that every such member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by the censure of the House itself) for or concerning any bill, speaking, reasoning, or declaring of any matter or matters, touching the Parliament, or parliament business ; and that if any of the said members be complained of and questioned for any thing said or done in Parliament, the same is to be showed to the King, by the advice and assent of all the Commons assembled in Parliament, before the King give credence to any private information.”

James, greatly wroth at this proceeding, sent for the journal of the House of Commons to his council, and tore out the protestation with his own hand. He dissolved the Parliament ; he imprisoned Coke, Selden, Pym, Phillips, and Mallory\*, all members of the dissolved House of Commons. He was not

\* The people of England should have these names by heart. They were, with John Hampden, and Oliver Cromwell, the founders of the liberties of the country.

aware that the force of the protestation he tore out was not in the parchment or the letters of a book, but in the hearts and minds of his subjects ; and he little expected that, by confining the persons of a few commoners, he was preparing the imprisonment and death of of his son.

If we look at the position of the adverse parties at this time, we shall see that James was attempting, most unseasonably, a new mode of government. The nature of the Gothic monarchies was generally the same. The King, who had first ruled together with his people in rude harmony, came, in time, to exercise certain powers of government which he called prerogative ; and the people who, in early times, assembled on every occasion to discuss grievances, and laws, and treaties, became in the progress of civilization divided into cities, and had their privileges set down in general and particular charters. Both prerogative and privilege were liable to misconstruction, and sometimes overflowed their

banks ; but the King always spoke with respect of the liberties of his subjects, even when he illegally imprisoned their persons ; and the people professed their veneration for monarchy, even when they deposed their king. Queen Elizabeth, acting in this spirit, abjured the notion of infringing the rights of her subjects, at the same time that she occasionally encroached upon and always narrowly confined the rights she professed to maintain. She acknowledged the *liberties* of the people without doubt or hesitation, but made use of her own dictionary, for the definition of the term. James attempted a new system : he denied the existence of privileges altogether, except by sufferance ; and without possessing the wisdom of an ordinary man, he claimed, in an enquiring age, the infallibility of the Deity. “ As it is atheism and blasphemy,” he said, “ in a creature to dispute what the Deity may do, so it is presumption and sedition in a subject to dispute what a king may do in the height of his power. Good Christians will be content with God’s

will, revealed in his word ; and good subjects will rest in the king's will, revealed in his law.” Such was the impious folly of James ! His sayings do him credit as a wit ; his learning was not unbecoming a scholar ; but his conduct made him contemptible as a king. How vain then to pretend that all the ancient privileges of the English nation were to depend upon his nod !

## CHAP. VII.

CHARLES THE FIRST.

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There was ambition, there was sedition, there was violence; but no man shall persuade me that it was not the cause of liberty on one side, and of tyranny on the other.

LORD CHATHAM, quoted by GRATTAN, (*Letter to the Citizens of Dublin, 1797.*)

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THE accession of Charles the First found the nation engaged in hostilities with Spain, which was then esteemed the most powerful monarchy in Europe.

An attempt has been made to throw upon the first Parliament of Charles the charge of bad faith and want of generosity, because they did not, previously to all enquiry into grievances, grant to their young king a sufficient sum to enable him to prosecute with due vigour the war which they had brought on by

their advice and encouragement. Now, even if it were true that the Commons were the authors of the war, still it would not follow that they did wrong in considering the abuses of the executive government, before they supplied it with fresh means of setting law and economy at defiance. A rigid enquiry into the public means and the public expences was at all events justly due to the nation, of which they were the representatives. In point of fact, however, the war was not theirs, but Buckingham's : it had been refused to the parliamentary address of the people ; and granted to the private pique of the favourite.\*

In considering the requests of the House of Commons from the commencement of the reign, we must never lose sight, as they never lost sight, of the ancient statutes of the realm.

\* “ Instead of judiciously mollifying the misunderstandings betwixt the two houses and the king, he (Buckingham) unadvisedly (for in Spain he had received some affronts upon some arrears he had made) runs the king into a war with that nation.”

WARWICK's *Memoirs*, p. 15.

Sir Philip Warwick was a courtier.

By Magna Charta it is established, that no freeman is to be imprisoned, or otherwise injured, but by the judgment of his peers, or the law of the land: therefore the judgments of the Star-Chamber, and the commitments by the sovereign's pleasure, were anomalous innovations. By a law of Edward I. no taxes were to be raised except by the authority of Parliament; therefore forced loans, benevolences, and monopolies, were illegal. By two laws of Edward III. parliaments were ordained to be held once a-year or oftener: therefore an attempt to govern without the regular advice, and continual authority of Parliament, amounted to a subversion of the established constitution of the state. Nor is it to any purpose, even as an *argumentum ad hominem*, to say that frequent violations of all these laws took place under the reign of particular sovereigns, especially the Tudors. The uninterrupted practice of trial by jury, the solemn usage of granting supplies in Parliament, and the frequent meetings of that high court, prove that

none of these rights had become obsolete, and that the exertions of prerogative incompatible with them were irregularities to be amended, and not examples to be followed.

The great stand made by Hambden, and his associates, against the payment of ship-money, was the immediate cause which prevented the establishment of arbitrary monarchy in England, as in France and Spain. He refused to pay to the king a sum of 20s.: the judges in Westminster-Hall decided against him, but the country was roused, and overbalanced by their sympathy the judgment of a court of law. Let us hear the testimony of Lord Clarendon on this subject; his reasoning is so pregnant, that I make no apology for inserting it at length. “ Lastly, for a spring and magazine that should have no bottom, and for an everlasting supply of all occasions, a writ was framed in a form of law, and directed to the sheriff of every county of England, ‘ to provide a ship of war for the king’s service, and to send it, amply provided and fitted, by

such a day, to such a place ;' and with that writ, were sent to each sheriff instructions, that, ' instead of a ship, he should levy upon his county such a sum of money, and return the same to the treasurer of the navy for his Majesty's use,' with direction in what manner he should proceed against such as refused : and from hence that tax had the denomination of *ship-money* ; a word of a lasting sound in the memory of this kingdom ; by which for some years really accrued the yearly sum of 200,000*l.* to the king's coffers : and it was in truth the only project, that was accounted to his own service. And, after the continued receipt of it for about four years together, it was at last (upon the refusal of a private gentleman to pay twenty or thirty shillings as his share,) with great solemnity publicly argued before all the judges of England in the Exchequer Chamber, and by much the major part of them, the king's right to impose asserted, and the tax adjudged lawful ; which judgment proved of more advantage and credit to the gentle-

man condemned (Mr. Hambden) than to the king's service.

“For the better support of these extraordinary ways, and to protect the agents, and instruments, who must be employed in them, and to discountenance and suppress all bold enquirers and opposers, the Council-Table and Star-Chamber enlarge their jurisdictions to a vast extent; ‘holding,’ (as Thucydides said of the Athenians) ‘for honourable that which pleased, and for just that which profited;’ and being the same persons in several rooms, grew both courts of law to determine right, and courts of revenue to bring money into the treasury; the Council-Table by proclamations enjoining to the people what was not enjoined by the law, and prohibiting that which was not prohibited; and the Star-Chamber censuring the breach and disobedience to those proclamations by very great fines and imprisonment; so that any disrespect to any acts of state, or to the persons of statesmen, was in no time more penal, and those foundations of right by

which men valued their security, to the apprehension and understanding of wise men, never more in danger to be destroyed.

“ And here I cannot but again take the liberty to say, that the circumstances and proceedings in those new extraordinary cases, stratagems, and impositions, were very unpolitic, and even destructive to the services intended. And if the business of ship-money, being an imposition by the state, under the notion of necessity, upon a prospect of danger, which private persons could not modestly think themselves qualified to discern, had been managed in the same extraordinary way, as the royal loan (which was the imposing the five subsidies after the second Parliament spoken of before) was ; men would much easier have submitted to it ; as it is notoriously known, that pressure was borne with much more cheerfulness before the judgment for the king, than ever it was after ; men before pleasing themselves with doing somewhat for the king’s service, as a testimony of their affection, which they were

not bound to do ; many really believing the necessity, and therefore thinking the burthen reasonable; others observing that the advantage to the king was of importance, when the damage to them was not considerable; and all assuring themselves, that when they should be weary, or unwilling to continue the payment, they might resort to the law for relief, and find it. But when they heard this demanded in a court of law, as a right, and found it, by sworn judges of the law, adjudged so, upon such grounds and reasons as every stander-by was able to swear was not law, and so had lost the pleasure and delight of being kind and dutiful to the king ; and instead of giving, were required to pay, and by a logic, that left no man any thing which he might call his own ; they no more looked upon it as the case of one man, but the case of the kingdom, nor as an imposition laid upon them by the king, but by the judges ; which they thought themselves bound in conscience to the public justice not to submit to. It was an observa-

tion long ago by Thucydides, ‘that men are much more passionate for injustice than for violence; because,’ says he, ‘the one coming as from an equal, seems rapine; when the other proceeding from one stronger, is but the effect of necessity.’ So, when ship-money was transacted at the Council-Board, they looked upon it as a work of that power, they were all obliged to trust, and an effect of that foresight, they were naturally to rely upon. Imminent necessity and public safety were convincing persuasions; and it might not seem of apparent ill consequence to them, that upon an emergent occasion the regal power should fill up an *hiatus*, or supply an impotency in the law. But when they saw in a court of law (that law, that gave them title to, and possession of all that they had) reason of state urged as elements of law, judges as sharp-sighted as secretaries of state, and in the mysteries of state; judgment of law grounded upon matter of fact, of which there was neither enquiry nor proof; and no reason given for the pay-

ment of the thirty shillings in question, but what included the estates of all the standers-by; they had no reason to hope that doctrine, or the promoters of it, would be contained within any bounds ; and it was no wonder that they, who had so little reason to be pleased with their own condition, were no less solicitous for, or apprehensive of, the inconveniences that might attend any alteration.

“ And here the damage and mischief cannot be expressed, that the crown and state sustained by the deserved reproach and infamy that attended the judges, by being made use of in this, and like acts of power ; there being no possibility to preserve the dignity, reverence, and estimation of the laws themselves, but by the integrity and innocency of the judges. And no question, as the exorbitancy of the House of Commons, in the next parliament, proceeded principally from their contempt of the laws, and that contempt from the scandal of that judgment : so the concurrence of the House of Peers in that fury, can be im-

puted to no one thing more, than to the irreverence and scorn the judges were justly in ; who had been always before looked upon there as the oracles of the law, and the best guides to assist that house in their opinions and actions : And the lords now thought themselves excused for swerving from the rules and customs of their predecessors (who, in altering and making of laws, in judging of things and persons, had always observed the advice and judgment of those sages) in not asking questions of those, whom they knew nobody would believe; thinking it a just reproach upon them, (who out of their courtship had submitted the difficulties and mysteries of the law, to be measured by the standard of what they called general reason, and explained by the wisdom of state) that they themselves should make use of the licence, which the others had taught them, and determine that to be law, which they thought to be reasonable, or found to be convenient. If these men had preserved the simplicity of their ancestors, in severely and

strictly defending the laws, other men had observed the modesty of theirs, in humbly and dutifully obeying them.

“ Upon this consideration it is very observable, that in the wisdom of former times, when the prerogative went highest (as very often it hath been swollen above any pitch we have seen it at in our times), never any court of law, very seldom any judge, or lawyer of reputation, was called upon to assist in an act of power ; the crown well knowing the moment of keeping those the objects of reverence and veneration with the people ; and that though it might sometimes make sallies upon them by the prerogative, yet the law would keep the people from any invasion of it, and that the king could never suffer, whilst the law and the judges were looked upon by the subject, as the asylum for their liberties and security. And therefore you shall find the policy of many princes, hath endured as sharp animadversions and reprehensions from the judges of the law, as their piety hath from the bishops of the

church ; as having no less influence upon the people, under the reputation of justice, by the one, than under the ties of conscience and religion, by the other. To extend this consideration of the form and circumstance of proceeding in cases of an unusual nature a little farther ; as it may be most behoveful for princes in matters of grace, and honour, and in conferring of favours upon their people, to transact the same as publicly as may be, and by themselves, or their ministers to dilate upon it, and improve the lustre by any addition, or eloquence of speech (where, it may be, every kind word, especially from the prince himself, is looked upon as a new bounty) ; so it is as requisite in matters of judgment, punishment, and censure upon things, or persons (especially when the case, in the nature of it, is unusual, and the rules in judging as extraordinary) that the same be transacted as privately, and with as little noise, and pomp of words, as may be. For (as damage is much easier borne, and submitted to by generous minds,

than disgrace) in the business of ship-money, and many other cases in the Star-Chamber, and at Council-Board, there were many imper-  
tinencies, incongruities, and insolencies, in the speeches and orations of the judges, much more offensive, and much more scandalous than the judgments and sentences themselves. Besides that men's minds and understandings were more instructed to discern the conse-  
quence of things, which before they consid-  
ered not. And undoubtedly my Lord Finch's speech in the Exchequer-Chamber, made ship-money much more abhorred and formidable, than all the commitments by the Council-Table, and all the distresses taken by the sheriffs in England: the major part of men (besides the common unconcernedness in other men's sufferings) looking upon those proceedings with a kind of applause to them-  
selves, to see other men punished, for not doing as they had done; which delight was quickly determined, when they found their own interest, by the unnecessary logic of that

argument, no less concluded than Mr. Hambden's.

“ He hath been but an ill observer of the passages of those times we speak of, who hath not seen many sober men, who have been clearly satisfied with the conveniency, necessity, and justice of many sentences, depart notwithstanding extremely offended, and scandalized with the grounds, reasons, and expressions of those who inflicted those censures; when they found themselves, thinking to be only spectators of other men's sufferings, by some unnecessary inference or declaration, in probable danger to become the next delinquents.”

In this able summary we have a clear statement of the causes of disagreement between the king and his people, a demonstration of the tyranny as well as the folly of the king, and a satisfactory explanation of the distrust of the people.

Lord Strafford, most unfortunately for himself, for his king, and his country, fell out of the ranks of the friends of liberty, and en-

couraged Charles to persist in a resistance, which, perhaps, he might otherwise have abandoned. Devoid of all public principle, and the slave of his malignant passions, even the patriotism of Strafford is to be attributed to his animosity to the Duke of Buckingham. With a mixture of baseness and boldness seldom equalled, he made himself the tool of his personal enemy, for the purpose of breaking down all the safeguards of the subject, contained in that petition of right, which he had been among the foremost to ask for and obtain. He had not the excuse of saying that he opposed new pretensions of the Commons, or that he had left his friends when they went beyond the bounds of legality and loyalty. The measures in which he assisted were violations of those laws which it was his glory to have recognized and established. He had himself said, “ We must vindicate :— what? new things? no :— our antient, legal, and vital liberties ; by reinforcing the laws enacted by our ancestors ; by setting such a stamp

upon them, THAT NO LICENTIOUS SPIRIT SHALL DARE HENCEFORTH TO INVADE THEM.” When Deputy in Ireland, he made large promises to the Roman Catholics to serve the King’s present convenience, without any intention of keeping them. He solicited an earldom as the reward of his services with an importunity, that shows his ambition to have been of the meanest kind. When in the north, he persecuted with the utmost cruelty a Sir David Foulis, who had omitted to pay him some trifling mark of respect.\* His conduct to Lord Mountnorris in Ireland was of the same kind. Upon the whole, he was a violent, unprincipled man, destitute of any elevation of soul; for his request to the King to let him die, can hardly be thought sincere; and there can be little doubt, that, till the end of his career, he expected to rise to supreme power, by pressing his foot upon the necks of the people. The intrepidity of his character, his powers of eloquence, the virtues of his private life, and,

\* Macdiarmid’s Lives, vol. ii. p. 121.

above all, the unjust manner in which he was condemned to death, have rescued his name from that abhorrence, with which every lover of his country would otherwise have regarded it. The execution of Strafford casts a stain upon all parties in the state. The House of Commons were instigated by passion; the House of Lords acted from fear; and Charles, from some motive or other, which, at all events, was not the right one. The admission of the mob to overawe the deliberation of Parliament was a sure sign that law was about to be subverted.

In a contest between a king who refuses any limitation of his prerogative, and a people who require it, there can be no equitable agreement. The ordinary authority of a limited king, the power of calling out an armed force, of proroguing and dissolving Parliament, cannot be entrusted to a sovereign whose main object it is to destroy, by means of a party, all limitation. William III., Anne, and the first sovereigns of the house of Brunswick, might

be safely entrusted with the prerogative, because no party in the nation wished to see arbitrary power in their hands ; but Charles I. could not, because the Cavaliers would have been unanimous in repealing the restrictions imposed by Parliament. Hence, when the popular party had provided sufficient checks for the people against a king, they were obliged to devise fresh ones against King Charles. After the plot of the royalists in the army, and still more when war had actually commenced, they were forced to ask for securities unnecessary, and improper in ordinary times. This forms the only justification of the law respecting the militia, the bill for continuing the Parliament, and the articles of Uxbridge. It was too much to expect that the victorious party should lay down their arms, quietly permitting the liberties they had wrested from the crown to be again surrendered by a packed Parliament ; and their own lives to be at the mercy of a king to whom the power of the sword had been again entrusted.

The difficulty was inseparable from the case. The king's prerogative is so great, that nothing but the established opinion of the whole nation can prevent his absorbing every other authority in the state.

The events of the reign of Charles, if we make use of the principle I have laid down, are not difficult to account for. The king commenced by quarrelling with Parliaments, and by an attempt to raise money without their authority, punishing at the same time in an arbitrary manner all who ventured to speak or write in behalf of the ancient liberties of their country. In this career he found, in high stations, and even on the bench of judges, willing and unprincipled instruments. At length he was obliged to call a Parliament. They reformed abuses, punished the tools of tyranny, and insisted upon keeping in their own hands the armed force of the country, lest the king should use the first moment after the dissolution of Parliament to re-establish his illegal power. Charles preferred trying the chance of war to

agreeing to these conditions. In the course of the war, his papers, taken at the battle of Naseby, convinced the Parliamentary party that any concessions he might make would be, in his mind, concessions to power and not to right, and that he would think himself entitled, if he should ever have the means, to re-possess himself of his former authority. It there came to light, that, at the time when he treated with the two houses, he entered a protest in the council book, declaring they were not a Parliament in the face of his own designation of them as such. Hence it appeared clear, that he thought himself at liberty to use any means to re-acquire that absolute power which he considered his birthright. And here, in my mind, was the error of Lord Clarendon and the constitutional royalists. Literally their proclamations and proposals were more conformable to the constitution than those of their adversaries; it is evident that in their proposed terms of peace, the Parliament went beyond the limits to which the ancient laws of the kingdom confined

them, and that they proposed to bind the prerogative of Charles more closely than precedent and example, and legal rule would justify. But if we pass from the letter to the spirit of the controversy, we shall see that the Parliament were endeavouring, by new restrictions on royal power, to obtain a necessary security for the performance of the old, and that the king was attempting, by the offer of plausible terms, to get in his hands the power of destroying all opponents, and breaking down every barrier to his will. The very conscience of Charles ordered him to deceive his enemies, and make himself absolute.

When the civil war was at an end, and Charles was defeated by his subjects, a new party had arisen, who went a step beyond the Presbyterians, both in religion and politics. The toleration which the Presbyterians had originally asked, in matters of dress and ceremonial, the Independents wished to extend to faith and doctrine, and were thus the earliest

advocates of religious liberty. The political freedom which the Presbyterians hoped to enjoy under the ancient kingly government of England, the Independents thought would best be secured by a republican constitution. Their views, with respect to the king, were tinged by the most erroneous notions, drawn from Scripture. They imagined the Sovereign ought to die, that the sins of the war might be expiated by him, and not by them. Ludlow, in vindication of the king's execution, quotes, with self-applause, a passage from the book of Numbers : “ That blood defileth the land, and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.” He continues—“ And, therefore, I could not consent to the counsels of those who were contented to leave the guilt of so much blood upon the nation, and thereby to draw down the just vengeance of God upon all; when it was most evident that the war had been occasioned by the invasion of our rights, and open breach of our laws.

and constitution on the king's part." \* This reason, if good for any thing, makes it not only the right but the duty of a party victorious in civil war, to put to death their adversaries in cold blood. Strange infatuation!

Charles fell a sacrifice at last, because Cromwell had lost his popularity by negotiating with him, and wished to regain his credit with his army. He had found reason to suspect, in the course of the negotiation, that Charles had no real intention of being reconciled with him, and that the democratic troops whom he commanded were ready to break out into mutiny in consequence of his supposed apostasy. His reconciliation was written in the king's blood. Machiavel, in a chapter in which he shows, "that a people accustomed to live under a prince, if by any accident it becomes free, with difficulty preserves its liberty," says that, "for the difficulties and evils which must be encountered, there is no more powerful, or more effectual, or more salutary, or more necessary

remedy than to put to death the sons of Brutus," that is to say, to give a striking example of severity against those who would be the chiefs of a counter-revolution.\* Such no doubt was the manner in which Cromwell viewed the death of Charles. It put an end to all hesitation, broke the spirit of the Royalists, and pledged him for ever to the enemies of the Stuarts.

By the nation at large, the capital punishment of the King was not demanded, and very soon lamented. When living, he was a baffled tyrant; when dead, a royal martyr.

Charles was an obstinate, prejudiced, and foolish man, possessed of considerable talents, exempt from most vices, and possessing but few virtues. In politics he was a spoiled child, and lost his temper when he was contradicted. Hence his conduct respecting the five members, and his early appeal to arms.

The fate of the Parliament was much more important to the state than that of the King.

\* See note (D) at the end of the volume.

or for law. In their utter inability to remedy this confusion, they turned their eyes to the strongest, and sought protection for their property and their lives. Thus, the attempt to bring human institutions at once to perfection, to get all the protection, without any of the oppression of authority, and to make every law the expression of exact truth and justice, ended in a recurrence to the rudest invention of a warlike tribe.

## CHAP. VIII.

CAUSES OF THE DISSOLUTION OF THE ENGLISH  
FORM OF GOVERNMENT UNDER CHARLES THE  
FIRST.

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Cunctas nationes et urbes, populus, aut primores, aut singuli  
regunt; delecta ex his et constituta reipublicæ forma laudari  
facilius quam evenire, vel, si evenit, haud diuturna esse potest.

TACITUS.

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SUCH was the deliberate judgment of Tacitus; a judgment, indeed, contradicted by the event, but which nevertheless is marked with the utmost perfection of thought, to which speculative reasoning could reach. Indeed, the history of the English government, whilst it finally disproves, affords, in its course, ample justification for the opinion of Tacitus. Let us first consider what, in his profound mind, must have struck him as an

obstacle to the success of a constitution made up of monarchy, aristocracy, and democracy. Was it the difficulty of forming a balance between the three powers? Surely not. Any schemer may lay out the plan of a constitution, in which the three powers shall each possess the authority, which in theory it ought to have. Indeed, there is scarcely any constitution which a man of sense can draw up that will not appear more plausible in this respect than the English. What more absurd, *a priori*, than that the King should have the sole power of making peace and war, whilst the Commons have the sole power of granting money?

It is not then the difficulty of balancing powers which has been overcome by the successful refutation our history affords to the dictum of Tacitus. The grand problem which has been solved is, how the three powers shall come into action without disturbance or convulsion. Many a workman can make an automaton; but not every one can make him

play at chess. More than one sculptor can form a beautiful statue ; none but Prometheus could give it life. The first disturbance which is likely to occur in such a constitution as ours, is a collision between the King, as sovereign, and Parliament formed of Lords and Commons, considered as his advisers. The King, by the constitution, has, and must have, the power of naming his own servants, who are to carry on the business of the executive government. But if these servants violate the laws, betray the cause, mistake the interests, or squander the blood of their country, it is as certain that the great council of the nation must have the power of demanding and enforcing their dismissal. Two such opposite pretensions have naturally given rise to contest and calamity.

In the reigns of Henry III., Edward II., and Richard II., the misrule of the King's servants led to the total subversion of his authority ; and on more than one occasion, commissioners were appointed by Parliament, who exercised all the prerogatives which the

law has placed in the King. Such provisions amount to a revolution in the state for the time being.

After the accession of the house of Tudor, another kind of revolution took place ; and the King, in his turn, swallowed up the powers of Parliament.

When Charles I. and his people began their dissensions, the great chasm, which separated one part of the constitution from another, again opened, and threatened destruction to the state itself. The first opposition party, afterwards called the Presbyterians, perceived the difficulty, and they imagined the method of solving it since so successfully adopted. Their expedient for ensuring a peaceable and long duration to our limited monarchy was, that the friends of the people should become the ministers of the crown. Charles accepted the proposal, and named the persons to be promoted ; but was soon disgusted with their advice, which ill accorded with his own arbitrary notions. He plunged rashly into a civil

war, and it soon became too late to expect accommodation. New politicians naturally arose, who maintained that it was folly to expend so much blood for the uncertain hope of the King's sanction to popular men and popular measures, when equal benefits might be secured by abolishing the kingly office altogether. Thus the prophecy of Tacitus was again accomplished ; the nobles had overwhelmed the King and the people ; the King had domineered over the nobles and the people ; and now the people extinguished the King and the nobles. The three powers of the realm, although each had a legal right to its portion of authority, were still confounded, trampling upon, and triumphing over one another. The constitution was still in its chaos. The hour, in which the elements were to be parted ; in which variety and contrast were to subsist without disorder ; when the King and the Commons were to separate from, and yet support each other, was not yet arrived.

Strange it is, however, that at the close of the eighteenth century a new sect of political theorists arose, who asked as a boon for the people that the House of Commons should be placed in the same state of disjunction from the crown, in which it stood at the beginning of the reign of Charles I. For such would be the effect of a law prohibiting any servants of the crown from sitting in the House of Commons, and leaving the choice of the ministers entirely to the pleasure, caprice, or passion of the sovereign. This would be to make a peace on the principle of the *status quo ante bellum*, after we had taken the territory which had been the original cause of dispute.

## CHAP IX.

CROMWELL, CHARLES THE SECOND, AND  
JAMES THE SECOND.

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But certainly it can never be worth the scratch of a finger to remove a single person, acting by an arbitrary power, in order to set up another with the same unlimited authority.

LUDLOW.

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CROMWELL did much for his country. He augmented her naval glory, and made her name formidable to all the legitimate sovereigns, to whom his birth was a subject of derision: the smile on their faces was checked by the terror in their hearts. He made use of this wholesome intimidation to secure the liberty of foreign Protestants; and before he died he perceived the danger to Europe from the growth of the French power, which

he thenceforth determined to restrain. At home he held the balance, upon the whole, evenly and steadily; he gave to no sect the preponderance of state-favour; and were it not that the questionable nature of his claim provoked rebellion, and made severity necessary to him, he would not have been a harsh ruler. Many would admire his character had he been born a sovereign, and some would praise him with more cordiality had he never become one.

The quarrels between the army and the Parliament, and the generals of the army among themselves, resemble more nearly the dissensions between the senate and soldiery of Rome on the choice of an Emperor, than any thing in modern history. They were the obvious preludes of a restoration. The Restoration was in its turn naturally the presage of cruel executions, of violated faith, of broken promises, of gratuitous confidence, of transient joy, and bitter disappointment. The death of Sir Harry Vane disgraced both Clarendon and

Charles, and is one of the most cruel and perfidious acts in English story. Nor in the course of a long reign did the King perform any thing to atone for the vengeance of the exile. He trampled on the rights, and shed the best blood of the nation, from which he had received the crown : he crouched at the feet of France, at a time when, of all others, England ought to have resisted French ambition ; and thus made himself odious as a tyrant, only to become contemptible as a slave. Yet the Restoration once determined upon, there is much to be said for those who have been constantly the objects of censure for bringing in the King without conditions. The best security for liberty was, that the King could have no revenue without the consent of Parliament : if that power were wisely reserved, no condition was necessary ; if it were improvidently parted with, none could be effectual. Clarendon saw this, and did his duty to his country. James also saw it, and hated Clarendon for his conduct. Nor is the

subsequent despotism of Charles any proof of the improvidence of those who restored him. The pension from Lewis XIV. was a resource which set at defiance all limitations on kingly power: had William III. accepted pay from the French King, he might have laughed at the remonstrances of his parliament.

The characters of Charles II. and Shaftesbury, the one indolent and careless, the other violent and rash, both inconsistent and unprincipled, gave a variegated colour to the whole reign. A profligate king, a religious people; excess of tyranny, excess of faction; the worst of governments, the best of laws; the triumph of party, the victory of despotism, are all to be found in this short period. It is difficult to say for what reason Charles, a witty and heartless man of pleasure, embarked in the vast undertaking of making himself absolute. Perhaps his easy temper made him yield to the suggestions of his brother; perhaps he merely consented to the advice of his courtiers. The ready way of accomplish-

ing this design, once adopted, was, as he conceived, to obtain money and troops from France. And as his father's throne had been overturned by religious fanaticism, he proposed to lay the foundation of his own upon a religion of blind obedience. The scheme not running on smoothly, however, he gave it up, partly from laziness, and partly from prudence; contenting himself with charitable donations from France, from time to time. The virulent opposition of Shaftsbury, and the attempt to exclude his brother from the throne, again roused him to exertion; and the discovery of the Rye House Plot afforded him a tolerable pretext for ridding himself of all his considerable enemies. Thus, without activity or anxiety, by merely taking advantage of events as they arose, he procured for himself an authority which those of his family who made kingcraft their occupation, never possessed. He subdued the liberties of England, because it gave him less trouble than to maintain them. But still, though unsuccessful, the men, who

could propose and carry through the House of Commons a bill for the exclusion of the next heir from the throne, evinced a spirit of honesty and freedom which no hazard could quell. The bill of exclusion was the legal warning of the Revolution.

The reign of Charles II., as has been observed, was an era of bad government, but of good laws. The act of Habeas Corpus was the greatest of these laws. It is the best security for liberty ever devised ; but it must not be supposed that it was invented during this reign. The writ itself is old, and various laws mention and confirm it, but it never was made capable of certain application, till the time of Charles II. ; and even after that time, the island of St. Nicholas, in Plymouth harbour, continued to be used as a state prison, beyond the reach of law.

James formed his designs on very different mould from those of his brother. Rash, obstinate, and bigoted, he settled in his own mind that he would make himself an arbitrary

king, and the Roman Catholic religion the religion of the state. Which of these projects he intended to finish first, I own does not seem to me to be worth very anxious dispute, since it is very clear that both objects were in his view. He pursued them with that stupid obstinacy which is so frequently fatal to a man without talent. His want of sense was accompanied, as it often is, with a want of heart; and as he could not himself reason, he felt no pity for those who could. His opinions appeared to his own mind infallible truths, and he knew no mode of convincing those who doubted, but by executions.

The faults of the house of Stuart may all be traced to the scholastic pedantry of James I. Generally speaking, these sovereigns were not tainted with the spontaneous cruelty, the unjust caprice, or the sordid fear, which go to the formation of a tyrant. But they were intimately persuaded that they were destined to inherit arbitrary power; and they went on inflicting taxes and fines, and confiscation, and

death, from a bigoted persuasion of their own divine right to govern as they pleased. James I. drew this notion from the old civil lawyers, and their imitators in Italy and Germany. He bequeathed it to his son, who lost his head in consequence of his perseverance in maintaining it. His grandson James, in trying to carry it fully into execution, fell unpitied from the throne. The whole family have since been exiles, and the last male descendant of James II. died a cardinal at Rome. This was paying dear for the failure of an erroneous theory; but England would have paid a still dearer price had it succeeded.

## CHAP. X.

THE REVOLUTION.

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He who wishes to reform an ancient state, and constitute it into a free country, ought to retain at least the shadow of the old forms.

MACHIAVEL.

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THERE are few examples of revolutions which have led to immediate good. This consideration ought to induce men who have any influence over their countrymen to be very cautious how they engage in projects which may put to hazard all that exists, unless they have a very near prospect of obtaining what is proposed.

The Revolution of 1688 appears to my mind the perfection of boldness, and of prudence.

The Tory party in general were not so much alarmed at the subversion of liberty, as

at the innovations introduced in religion. “Church and King,” in the order they are used, was their motto and their faith. In their anxiety to preserve the church, they appealed to the Prince of Orange; but they never intended he should supplant the legitimate King. The Earl of Nottingham proposed in the House of Lords, that the Prince of Orange should be regent: the Duchess of Marlborough bears testimony to her husband’s surprise upon finding that the crown was to be transferred to William; and the Earl of Danby, avowed, upon Sacheverell’s trial, that it had never been his wish or expectation that James should be dethroned.

Had those, who invited the Prince of Orange to England, satisfied themselves with obliging James to call a parliament, the rest of his reign must have passed in continual jealousy. It would have been still more absurd to have given William the power, and James the title of King. That title, which is not the private patrimony of an individual, can only belong

properly to the person who is qualified to exercise the office. The Princess of Orange being the nearest of blood, (except the infant son of James,) and a Protestant, the Prince of Orange (himself the nephew of James,) was the fit person to be king. He had besides this merit in the eyes of the Whigs, that his right to the crown, and the right of the people to their liberties, were thenceforth to be placed on the same foundation, and opposed to the same Pretender.\*

The more violent of the Whigs were not satisfied with changing the dynasty. They looked to extensive reforms both in church and state: they wished to change our ecclesiastical laws, and remodel the House of Commons. Others desired, and perhaps with still more apparent reason, to abolish the monarchy, and constitute a republic. But the leaders of the Revolution knew, with Machi-

\* Had the crown continued in the House of Stuart, it would have been at the present day on the head of the King of Sardinia, descended from a daughter of the Duchess of Orleans, who was herself daughter of Charles the First.

avel, that nothing so much tends to give stability to a change of government, as an adherence to old forms and venerated institutions. They knew, that to enter upon a discussion of new projects, however plausible, at such a moment, and in the face of a large adverse party, would expose their work to be presently overthrown, and could only lead to endless conflicts, and unsatisfactory decisions. For these reasons, the leaders of the Revolution contented themselves with confirming by solemn statute all the ancient liberties of England, and protesting against those particular violations of them, which had taken place in the late reign. Whether the securities they took were sufficient to form the basis of a good government, or whether they were but half-measures, satisfying the eye, but not the appetite, we shall see, in the following chapter.

It is curious to read the conferences between the Houses on the meaning of the words “ deserted,” and “ abdicated ;” and the debate in the Lords, whether or no there is an original

contract between King and people. The notion of a tacit contract by which the King and his subjects are to be guided in their relations with each other is certainly not correct. The King, without any contract whatever, is bound to carry into execution the laws which are entrusted to his care. This is the simple duty of his office. But if at any time the people should require of him new liberties, he is bound to give them the species of government which the state of the nation, and the knowledge of the age may demand. The foundation of every durable government is the common consent of the realm.

The notion of an original contract, however, was the theory of the friends of liberty in every part of Europe. The Spaniards had asserted it in the beginning of their contest with Charles V.; and indeed it had a foundation in the origin of the feudal governments. The only debate in the House of Lords was between those who asserted the original contract, and those who maintained

the divine right of kings. In short, the question was, whether or no kings derived their power from the people. It was decided that they did ; and the next resolution was, in substance, that James had abused that power, and had thereby become amenable to the nation. For such is the clear meaning of the vote of the two Houses, declaring that James, having broken the original contract between king and people, having violated the fundamental laws, and having withdrawn himself out of the kingdom, had abdicated the throne, and that the throne was thereby vacant. Nothing could be more creditable to the temper and justice of the English people than the calm discussion of this question ; nothing more decisive of their wisdom and love of freedom than the judgment which they pronounced.

## CHAP. XI.

## DEFINITIONS OF LIBERTY.

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The liberties of nations are from God and nature, not from  
kings. ALGERNON SIDNEY.

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MANY definitions have been given of liberty. Most of these deserve no notice whatever; but there are two which, having been adopted by celebrated men, merit consideration. The first of these is the definition of the Roman civil lawyers, that liberty is the power of doing that which is not forbidden by the laws. The other is, that liberty is the power of doing all that we ought to be allowed to do. Of these two, it appears to me, the first includes too little, and the second too much. If liberty consists in being able to do what the law permits, a despotism, established bylaw, and which always works by law, is a free government. Napoleon, for instance, scarcely ever violated

in France the laws he had made ; these laws, however, were tyrannical. But if no country is free except where no unjust prohibitions and no unnecessary penal laws are found, it is impossible to say that there has ever existed a free government. What shall we say, for instance, to that law of the Twelve Tables, by which it was enacted that insolvent debtors should be given up to their creditors, to be bound in fetters and cords ; and by which, though not made slaves, they were liable to be treated with the same or greater harshness ? \* Indeed, what shall we say to the freedom of any democracy; for, have they not all passed laws measured by the rule of their own passions ? Even England, whose governing power is formed expressly from a composition of conflicting forces, has admitted on her statute-book many an unjust and cruel enactment. A complete definition of liberty is perhaps impossible. Nor is liberty all of one kind. A nation may have one kind, and be quite deprived of another. The greatest ad-

\* Adam, R. Antiq. p. 45.

A. Gellius, N. A. l. 20 i.

vantages, however, which a community can procure to itself, by uniting under one government, may, perhaps, be comprehended under the titles of Civil Liberty, Personal Liberty, and Political Liberty.

By civil liberty, I mean the power of doing that, and that only, which is not forbidden by the laws. This definition comprehends the security of person and of property.

By personal liberty, I mean the power of doing that which in itself is harmless, as speaking or writing, and of which the abuse only is criminal. Eligibility to office may also be comprehended under this head.

By political liberty, I mean the acknowledged and legal right of the people to control their government, or to take a share in it.

Each of these kinds of liberty should be allowed to exist in as great a proportion as possible. They were all comprehended by Cromwell's representative under the names of "the peace and security, the rights and privileges of the people."

## CHAP. XII.

CIVIL LIBERTY.

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The laws of England are the birthright of the people thereof; and all the Kings and Queens who shall ascend the throne of this realm, ought to administer the government of the same, according to the said laws; and all their officers and ministers ought to serve them respectively according to the same.

*Statute 12 & 13 WILL. III. c. 2.*

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CIVIL liberty comprehends the security of person and property. For if a man is only allowed to do that which the law permits, he is liable to punishment should he raise his hand against his neighbour in violation of law; and if he is free to do all that the law does not forbid, he cannot be called in question for a legal exercise of his rights.

“ In walking over a large field with about thirty attendants and slaves, Hassan told the

owner that he had done wrong in sowing the field with barley, as water-melons would have grown better. He then took some melon-seed out of his pocket, and giving it to the man, said, ‘ You had better tear up the barley, and sow this.’ As the barley was nearly ripe, the man, of course, excused himself from complying with the Kashef’s command. ‘ Then I will sow them for you ;’ said the latter, and ordered his people immediately to tear up the crop, and lay out the field for the reception of the melon-seed. The boat was then loaded with the barley, and a family thus reduced to misery, in order that the governor might feed his horses and camels for three days on the barley-stalks.”\* — Every one must feel that, in a country where this could happen, there can be no security for property.

Tavernier tells us of a king of Persia, who ordered the heads of all the beasts he had killed in one day’s chase to be set up in the

\* Burckhardt’s Travels in Nubia, vol. i. p. 94.

form of a pyramid. When it was done, the architect came and told him that the pyramid was complete, with the exception of one large head for the summit. “I think yours will do very well for that,” said the king; and to this brutal joke sacrificed an innocent man. In such a country there can be no security for life.

When Athens was in its splendour, there arose that detestable class of men, who gained their livelihood by informing against the best and worthiest of their fellow-citizens, and holding out to the rapacity of a sovereign mob, the temptation of a rich forfeiture. It should never be forgotten by those who are disposed to admire a democratic government, that the word *sycophant* had its origin in the most popular of all democracies.

Nicophemus and Aristophanes, public functionaries, were accused of malversation. On some change in the government, they were imprisoned, and secretly made away with without a trial. Their property was confiscated. The

amount disappointing the greedy accusers, a prosecution was instituted against the brother of the widow of Aristophanes for embezzling the sum that was deficient. What is the language of his advocate upon his trial? An appeal to feelings of justice and generosity? No: he plainly intimates the rapacity of the judges. “ I know how difficult it will be,” he says, “ to refute the received opinion of the great riches of Nicophemus. The present scarcity of money in the city, and the wants of the treasury which the forfeiture has been calculated upon to supply, will operate against me.” \*

During the reign of terror in France, men were put to death for relationship to suspected persons, for acquaintance with the condemned, for having wept at the death of the King, and a thousand vague and trivial offences.

Thus unlimited despotism and uncontrolled democracy are found to be equally unfavourable to the existence of civil liberty. The ex-

\* Mitford's History of Greece, vol. v. p. 96.

amples I have adduced are extreme cases; but in every state, where either the monarch, the aristocracy, or the multitude, is allowed to have too much power, civil liberty is incomplete: that is to say, a subject of such a government cannot be sure that, even when he obeys all the laws, he may not be taxed or imprisoned by arbitrary mandate. Witness the gabelle and the Bastile of the French monarchy; the prisons of Venice; and the banishments of Florence. All these states were professedly under the government of laws, but to some of their citizens these laws were but a shield of paper. It may, however, generally be observed, that the violations of justice in a monarchy are more frequent; in a democracy, more striking. It seems more natural and tolerable that a king, revered as a kind of superior being, should oppress a slave, than that an assembly of freemen should maltreat an equal.

Let us now see how civil liberty is provided for in England. It is declared by the King,

in *Magna Charta*, the earliest and the best law upon our statute-book, that no freeman shall be any way destroyed, unless by the judgment of his peers, or the law of the land — “*Nullus liber homo aliquo modo destruatur, nisi per legale judicium parium suorum, aut per legem terræ.*” This admirable law, however, was frequently violated in times of disorder. It was renewed very frequently; but notwithstanding these renewals, and the claims of the Petition of Right, the subject had no effectual remedy against wrong, till a law of Charles II. provided means for an easy execution of the ancient writ of *Habeas Corpus*. This act, well known by the name of the *Habeas Corpus* Act, commands, that upon written complaint from or on behalf of any person confined in prison, except on a charge of high treason or felony, the Lord Chancellor and the Judges shall, upon pain of forfeiting the sum of 500*l.*, deliver a writ, ordering him to be brought into court. The writ is to be delivered, and the prisoner is to be brought into court within

twenty days; and if his offence is bailable, he is to be discharged upon offering bail, and entering into a recognizance to appear at his trial. If his offence is charged as treason or felony, and if the prosecution is not followed up within the second term after his commitment, he is to be discharged. If no offence is specified in the warrant of commitment, his imprisonment is illegal, and he must be instantly discharged. Besides this protection, the Judges go into the country twice every year, with a commission of gaol-delivery, for clearing all the prisons. These securities, however, availed not against James II., who employed the island of St. Nicholas, in Plymouth harbour, for a state prison, in the same manner as Cromwell had before made use of the isle of Jersey. From the Revolution, however, the Act of *Habeas Corpus*, when in operation, has always been found of power to protect the subject. Of the suspensions of that law, I shall speak hereafter; I would now remark only, that the suspensions prove the

practical efficacy of the *Habeas Corpus Act*, as much as the renewals of *Magna Charta* prove the practical inefficacy of that great compact. All the precautions taken to prevent arbitrary imprisonment, however, would be nothing, if the trial when it took place could be unfairly and oppressively conducted. To prevent so dreadful an evil, we have the institution of trial by jury. The sheriff, a man of substance in the county, returns from twelve to twenty-three freeholders (usually men of property), to serve as a Grand Jury. To them the bill of indictment, or accusation, is preferred ; they examine witnesses in support of it ; and unless they find probable grounds to proceed upon, the bill of indictment is thrown out, and the prosecution cannot be persisted in. To form the second, or Petty Jury, who are to try the cause, the sheriff returns the names of a number of freeholders, not less than forty-eight, nor more than seventy-two. The names are put into a glass, and the twelve first drawn form the jury. At this period, the pri-

soner may challenge any whom he can reasonably accuse of partiality, or whose characters have been degraded by the sentence of a court of justice. In treason, he may challenge peremptorily thirty-five. When the trial is over, the twelve jurymen remain inclosed together without separating or conferring with others, till they can deliver an unanimous verdict.

Nothing can appear less perfect in theory than the institution of trial by jury. What can be more liable to abuse, it may be said, than the choice given to the sheriff, an officer appointed by the crown? What more prejudicial to an accused person than the previous decision of twenty-three men of wealth and figure, formed upon hearing one side of the question only? What more likely to create confusion of right and wrong, than to require an unanimous verdict, and thus make the guilt or innocence of a prisoner depend on the mental incapacity, the moral obstinacy, or even the physical strength of a single juror? These objections I shall not attempt to answer;

the veneration which the English have for trial by jury, like the admiration they entertain for Shakspeare, must be taken as a practical proof of its excellence ; and it would be as absurd to attempt to demonstrate that a people long free attribute their freedom to a slavish institution, as to endeavour, like Voltaire, to prove that a people long civilized adore barbarous and ridiculous poetry. It must be admitted, however, with respect to trial by jury, that it is liable to be perverted in bad times, and that the condemnation of Sidney was an act which equalled, if it did not surpass in violence, the attainder of Strafford. This institution, therefore, is rather an instrument of liberty in her prosperity, than a protector in her adversity ; it is the companion, but not the survivor of free parliaments, and a free press. During the reigns of Henry VIII. and Charles II. juries were effectually perverted, and became the submissive organs of tyranny. But, since the Revolution, the general respect that has prevailed for right and justice, has prevented

abuse, and, upon the whole, juries have kept the balance very even between the safety of government and the liberty of the subject.

Trial by jury leaves, properly speaking, but little power to the judge. When the trial is over, the judge recapitulates the evidence, and explains the law upon the subject. The decision upon the facts is left entirely to the jury. If they find the prisoner guilty, the judge pronounces the sentence affixed by law. This arrangement, the best ever imagined, leaves nothing to the judge but what is absolutely required, and cannot easily be abused. It is necessary, for the sake of the regularity and accuracy of judgments, that some one present should have that knowledge of the laws, which can only be acquired by long and exclusive study: and it is much better that he should speak on the trial, than that he should assist at the decision; for numbers are ready at the bar to observe lest he misrepresent the law.

Notwithstanding this proper division, juries, in the time of Charles II., were controlled

and dictated to by court judges, who were appointed and removed, in proportion to their subserviency. To prevent this abuse, an act passed, early in the reign of King William, providing that judges should be appointed during good behaviour, and should be removable only by addresses from both Houses of Parliament; an act which completely answered its purpose of making the judicial power independent of the executive, and gave an authority to the name and character of an English judge, which it had never before possessed. We must never forget, however, that there is yet another security which is, perhaps, more valuable than any. The trial is public, and the accused is brought face to face with his accuser, before the country.

Security of property is also well provided for. By a law of Edward I. it was enacted, that no aids or taxes should be taken from the subject, but by common assent of the realm. What this means we shall see, in a following chapter. It having been found, notwithstanding

ing this law, that the King, by means of the Star Chamber, was able to impose arbitrary penalties, it was enacted in the law which abolished that tribunal, that it should not be lawful for the King in council, by English bill, or any arbitrary way whatsoever, to call in question the property of the subject.

The courts at Westminster-hall, the circuit of the judges in the country, the body of the magistrates, consisting of the principal gentlemen of the county in which they act, giving their perpetual attendance at home, and meeting in quarter and petty sessions, to administer the law gratuitously\*, are all instruments engaged in executing that great article of the Great Charter,— “ We will not deny nor delay, nor sell right or justice to any one.” We have reason to rejoice in the observation of Delolme, who remarked with pleasure, within the precincts of the King’s residence at

\* I have inserted this word, as we hear the unpaid magistrates so highly praised for disinterestedness. They have power, however, for their trouble, and a power which the barons of old struggled so hard to possess and exercise.

Windsor, inscribed in an enclosed space;—  
“Whoever tresspasses on these grounds, will  
be prosecuted according to law;” thus claiming  
for the King the common security of the  
poorest cottager in the land. Nor has it  
been found, that the exalted station of the  
royal family has ever enabled them to trespass  
on the property, or disturb the private rights  
of individuals.\*

\* See note (E) at the end of the volume.

## CHAP. XIII.

PERSONAL LIBERTY.

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Methinks I see in my mind a noble and puissant nation rousing herself like a strong man after sleep, and shaking her invincible locks ; methinks I see her as an eagle renewing her mighty youth, and kindling her undazzled eyes at the full mid-day beam ; purging and unscaling her long-abused sight at the fountain itself of heavenly radiance ; while the whole noise of timorous and flocking birds, with those also that love the twilight, flutter about, amazed at what she means, and in their envious gabble would prognosticate a year of sects and seisms.

MILTON.

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NEXT to civil liberty, in the order I have laid down, comes personal liberty. By personal liberty, I mean the freedom from restraint upon actions which are not criminal in themselves. The chief liberties of this class are the freedom of speaking and writing, and freedom of conscience in matters of religion.

The absence of all exclusive personal privileges, such as signorial rights, exemption from taxes, monopoly of civil and military offices, must be reckoned also in this class ; for that which is a privilege to one man is a restraint upon another.

The liberty of speaking and writing was allowed in ancient times, not only in free states, but wherever despotism fell into the hands of a mild sovereign ; and so palling to the ear is the continual monotony of praise, that in the absolute kingdom of Persia, where the sovereign is thought to be the very image of the Divinity, a jester was always kept, whose business it was to tell the truth, and yet to tell it in such a way that the King might, if he pleased, laugh at the fable, and neglect the moral. The fool of modern kings was a creature invented for the same purpose. Such were the devices which sovereigns adopted for the sake of hearing a little free observation, at a time when nations were divided into the court and the country. The court never

spoke of the king's actions but to praise them, and the country never spoke of them at all. Such was still the state of Europe when Machiavel wrote *The Prince*, and he takes it for granted, in that much debated work, that the mass of the people can be kept wholly ignorant of the real character of their sovereign. The progress of knowledge has overturned the basis of his whole system, and were Machiavel to write at this day, he would probably recommend to kings a totally different line of conduct.

The policy pursued by the governments of Europe, in latter times, has been extremely various. Austria and Spain have assumed as a principle that, as general freedom of discussion must produce much calumny on private persons, much seditious writing against authority, and much matter offensive to morality and religion, it is prudent for the state, and humane to the writers, to place the press under the guardianship of censors appointed by the government. By this method, it is asserted,

all fair and temperate discussion may be allowed ; libels are stifled in the egg, before they have worked mischief ; and public justice is spared the necessity of inflicting severe punishment. But in fact there is no method of restraining the abuse of the press previous to publication, which does not control the use : the imperfect civilization of Austria and Spain bears witness to this truth. The government of France, without sanctioning so strict a system of ignorance as that of Spain, refused to allow publication without restraint. But the mitigated prohibitions of the French censors, in some degree contributed to spread the false notions which obtained vogue at the beginning of their revolution. Every thing might be attacked by an equivocal jest, although nothing could be combated by direct reasoning ; and the able writers of the last century soon found that the best institutions were as open to a sneer as the grossest abuses. General declamation, and affected sentiment were allowed, till the opinions of men fell into general

confusion. At length the throne was shaken, the altar sapped, and a mine ready to burst under their foundations, before any one had had a fair opportunity of urging an argument in their behalf. The policy of England has been, since the Revolution, completely the reverse both of the Spanish and the French. During the reign of Elizabeth, as we have seen, the most severe punishments were awarded to libellers. During the reign of James, and the early part of Charles I. a censorship was established by means of a licence act. Cromwell adopted the same policy, which was continued by Charles and James. The licence act of the latter expired in 1694, and has never been renewed. The constitution of England thus deliberately, not in the heat of the revolution itself, but without clamour, without affectation, without fear, and at once, adopted a free press. The principle then sanctioned is, that, as speaking, and writing, and printing, are things in themselves indifferent, every person may do as he pleases, till by writing what is

calumnious or seditious, he offend the laws. That a great advantage is afforded to personal liberty by the permission of a free press, is what no man can doubt. Reflection may convince us that this liberty is also beneficial to the community at large. Genius can never exert its powers to their full extent, when its flight is limited and its direction prescribed. Truth can never be ascertained, when all discussion is regulated by those who hold the reins of government, to whom the discovery of truth is not always acceptable. Neither is it true, as some people imagine, that no government can withstand the daily attacks of the press. Men know when they are prosperous, and although they love to grumble at their rulers, the most brilliant rhetoric will not persuade a nation already in possession of liberty, that it is wise to risk a civil war, in order to obtain a change in the form of government. Popular clamour, if it be no more than clamour, is more noisy than formidable, and by a wise beneficent government may be safely

endured. The slanderous whisper of the Emperor of Russia's courtiers is ten times more dangerous to a good minister than the angry hubbub of the King of England's people.

The right of petition is another right, by which men are enabled to express their opinions, and to set forth their grievances. When Charles II. was engaged in a contest with his Parliament, this right was much discountenanced; and it was, therefore, declared by the Bill of Rights: "That it is the right of the subject to petition the King, and that all commitments and prosecutions for such petitioning are illegal." This right is still a very important one. A few years ago, the property-tax was overthrown, chiefly by the petitions of the people to the House of Commons.

The rights we have now been stating, viz. those of printing and petitioning, invest the people with no actual power or authority. But they are of infinite importance in controlling and guiding the executive power. The influ-

ence of a free press, however, has never been so thoroughly felt as during the present reign, and, therefore, till I come to that period, I shall defer any further observation respecting it.

We come next to religious liberty, upon which subject the authors of the Revolution did as much as they could, and by their maxims laid the foundation of much more.

We have seen how little of the spirit of charity and forbearance mixed with the reformation of Henry VIII. It is painful to think that Cranmer continued the same severity during the short reign of Edward, and that an unfortunate woman was burnt for some incomprehensible refinement respecting a mystery of our faith.

When the papal power was for the second time overthrown by the accession of Elizabeth, no progress was made towards the establishment of religious liberty. From this time dates the great schism amongst the English protestants, known, according to their respec-

tive parties, by the names of Puritans and Conformists. A congregation of refugees, settled at Frankfort in the reign of Queen Mary, omitted in their worship the Litany and some other parts of King Edward's liturgy. A Dr. Coxe arriving there from England, interrupted the service by a loud response, omitted in the new form of prayer. After some contest, and some expedients not quite worthy of the cause of religion, he succeeded in driving his opponents from the place, and establishing the liturgy of Edward. Other congregations, however, had made similar reforms, and when the exiles returned to England, there was an open difference between the Conformists, among whom were Grindal, Parker, &c. and the Puritans, who reckoned in their numbers, John Knox, Bale, Fox the author of the Book of Martyrs, &c. The chief deviations introduced by the Puritans, in practice, respected the use of the surplice, the cope, the cross in baptism, and kneeling at the communion; but in principle there was a

much wider schism. The Conformists acknowledged the church of Rome as a true church, though corrupted; and they maintained that the King, as supreme head of the church, had authority to correct all abuses of order and worship. The Puritans abjured the church of Rome altogether, and contended that it belonged not to the King, but to assemblies of the reformed clergy, to pronounce upon ceremonies and worship.\*

It is not surprising that Elizabeth warmly espoused the cause of the Conformists. Naturally inclined to the splendours of the Roman Catholic service, and fully impressed with the value of her authority in the church as well as in the state, she proceeded to punish the adverse sect. In doing this, she acted upon a principle common to both sides — that an uniform faith, and an uniform church were absolutely necessary. Agreeably to these notions, she obtained an act of

\* Neale's History of the Puritans, vol. i. p. 144. See note (F) at the end of the volume.

Parliament for instituting a court of High Commission, and invested them with powers of fine and imprisonment, which the law had not granted. She offered bishoprics to Miles Coverdale, Knox, and others of the puritan faith, but nothing could shake their constancy. Many of the most upright reformers attested their sincerity by their deaths. Barrowe, Greenwood, and Penry, were amongst the most distinguished of the reformers capitally punished for their religious or ecclesiastical faith.

James I., very soon after his accession, gave a sufficient warning that he was an enemy to toleration. For having appointed a conference at Hampton Court between the Conformists and the Puritans, he took upon himself to manage the controversy for the former, and after three days' dispute amid the applause and flattery of the established clergy, he turned to his opponents, and said, "If this be all your party have to object to the established religion of this kingdom, I will make them conform, or expel them out of the land."

He was as good as his word. The court of High Commission required the dissenters to appear before them, and to affirm solemnly upon oath that which they could not conscientiously believe. Ruinous fines and long imprisonments were the penalties of disobedience. One person, accused of denying the divinity of Christ, and another charged with sixteen heretical opinions, were burnt alive.

Cromwell was raised by a sect, which the first in England, perhaps in Europe, made toleration a part of its doctrine. But it was a toleration of opinions, like the presbyterian toleration of vestments, intended chiefly for their own convenience. Cromwell himself, who probably carried as far as any man of his day a wish for indulgence, yet in the Instrument of Government, after a solemn declaration in favour of religious liberty, finishes the article by expressly excluding papists and prelatists from the benefit of the general freedom. Thus, with liberality in profession, the law, in fact,

The declaration of Charles II. from Breda, offered new hopes of a mild and conciliatory system. But such hopes were grievously thwarted by the laws passed soon after his accession. Those who attended any meeting for religious purposes “in any other manner than was allowed by the liturgy or practice of the church of England,” were punished for the first offence by 5*l.* fine and three months’ imprisonment; for the second by 10*l.* fine and six months’ imprisonment; and for the third by transportation, and death in case of return.\* By the Five Mile Act, dissenting clergymen were forbidden to preach within five miles of a market-town. During the last years of Charles, these laws against the dissenters were rigorously enforced.

At length by the act of 1 William and Mary, c. 18. intituled “An Act for exempting their Majesties’ Protestant subjects, dissenting from the Church of England from the penalties of certain laws,” commonly called the Toleration Act, all persons who took the

\* See note (G) at the end of the volume.

oaths of allegiance and supremacy, and subscribed the declaration against popery, were exempted from penalties ; and meeting houses regularly registered, provided the service was performed with doors unlocked, were permitted. Since that time the presbyterians of England have been allowed to perform their worship in the manner which they think most acceptable to God. At the same period an attempt was renewed which had been made in the reign of Charles II. to bring about a reconciliation between the conformists and dissenters. In this pious work, called the Comprehension, Tillotson and Burnet took an earnest and Christian share. They proposed to amend the liturgy in several points ; to divide the services ; to leave out parts of the prayers which had given offence, and, by a few wise and reasonable concessions, to restore to the church a large multitude of her banished children. Articles for this purpose were prepared ; but the clergy, in convocation, defeated these benevolent schemes, and insisted on exclusion and discord.

Among the concessions made to religious liberty, there were none in favour of the Roman Catholics. On the contrary, new laws were passed, of excessive severity, tending to render the Roman Catholics poor and ignorant, heaping penalty upon penalty, and making them, as it were, slaves among a nation of freemen. Yet it must not be supposed that a nation so humane as the English, acted in this harsh and unusual spirit of bitterness without deep provocation. The reigns of Elizabeth, of James I., of Charles II., and of James II., had been disturbed by Roman Catholic plots, more or less sanguinary, some using as their means the assassination of the sovereign, others the introduction of a foreign army, but all tending to extinguish the liberties, and destroy the independence, of England. Whether the precautions adopted by the English Parliament were wise I will not decide; but I am clearly of opinion they were just.

Under the head of Personal Liberty should be placed eligibility to offices civil and military.

The policy of the great states of the world has been often narrow, illiberal, and unjust, upon this branch of true freedom. Rome excluded for centuries her plebeian genius and valour from the rewards due to distinguished services. Modern France, at first by custom of administration, and afterwards by positive edict, closed the door of military eminence to all ambition that was not of noble descent. Venice gave the command of her fleets to her patricians, and of her armies to strangers. England rejects all these odious distinctions of rank and birth. The ploughman's son may climb to the command of her military and naval forces; to the post of Lord High Chancellor, or the dignity of Archbishop of Canterbury. This just and wise equality has amply rewarded by its effects the state which established it. Not only has England reaped the benefit of talents which would otherwise have been lost in obscurity; but by this impartial share in the dignities of the state, society, instead of forming two hostile classes of noble and plebeian, has been united in one

compact power. In a well-known conference between the Lords and Commons, it is stated, by Lord Somers, and other managers on the part of the Lords, that there can scarcely be a more unhappy condition for an Englishman, than to be rendered incapable of serving his country in any civil or military office. It must be observed, however, that religious disabilities are well known to the law of England. Protestant Dissenters were excluded from office by the Test and Corporation Acts. And although for the last seventy years they have been tacitly admitted, by an Indemnity Bill passed every year, in favour of any who may have omitted to take the oaths, their freedom cannot be said to be complete. The Roman Catholics, it has already been observed, were likewise excluded from all power. By the Corporation and Test Acts, and other subsequent acts of Charles II. and William III., all offices, civil and military, and even the doors of the Houses of Lords and Commons, were shut against them.

## CHAP. XIV.

## POLITICAL LIBERTY.

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I believe the love of political liberty is *not* an error; but, if it is one, I am sure I shall never be converted from it, and I hope you never will. If it be an illusion, it is one that has brought forth more of the best qualities and exertions of the human mind than all other causes put together; and it serves to give an interest in the affairs of the world, which without it would be insipid.

Fox, *Letter to one of his Friends.*

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THE two kinds of liberty of which we have spoken, viz. civil and personal liberty, have existed to a certain degree in states which we usually term despotic. The monarchies of modern Europe have all been more or less governed by fixed laws, deriving their sanction from prescription. The monarchy of Prussia, which is altogether unlimited, allowed, from the time of Frederick II., great latitude of religious and political discussion.

As long, however, as the supreme power of the state is placed in the hands of one or many, over whom the people have no controul, the tenure of civil and personal liberty must be frail and uncertain. The only efficient remedy against oppression is for the people to retain a share of that supreme power in their own possession. This is called political liberty. And what is called a love of liberty means the wish that a man has to have a voice in the disposal of his own property, and in the formation of the laws by which his natural freedom is to be restrained. It is a passion inspired, as Sidney truly says, by Nature herself. In the manner of exercising this power, and satisfying this desire of the people, and in the portion of controul retained by them, free states have differed; and in these forms consist their respective constitutions.

Authors who have written upon these subjects have distinguished three powers, viz. the Legislative, the Judicial, and the Executive. These powers, they maintain, ought to be

separated. They never have been, and never can be so, thoroughly. The Judicial, indeed, which, properly exercised, means nothing more than applying general rules or laws to particular cases, without any discretion, may be so separated: and we have already seen, that in the English Constitution this division has been very wisely made.

The Judicial Power in England is, as we have seen, placed in the hands of persons rendered independent of the crown by the law of William the Third, which makes them removable only upon an address by the two Houses of Parliament. Since this time the character of an English judge has been held in deserved estimation:—of their personal integrity, and their conscientious attachment to the law, no doubts or suspicions have been entertained. The corruption of Tressilian, and the unprincipled violence of Jeffries, have never been repeated. The utmost that can be said against the judges is, that, always chosen from the court party, and often from the placemen of

the day, their bias in political causes has been naturally and inevitably in favour of the crown. Any one who follows the state trials, will perceive, that the judges, in their interpretations of law, and still more in their sentences, reflect too lively an image of the inclination of the government of the day : mild when the minister is moderate ; severe when he is intemperate. Such is the fault of the judges of England ; but one which, seldom pushed to any great extent, even in language, and never to any violent or palpable misconstruction of law, is perhaps as slight a stain upon the ermine of justice as human nature will permit. Happily, too, precedents are now so numerous, and so carefully recorded, that a judge cannot, in the face of the bar and of the country, very greatly deviate from the line of duty. Hence, the confidence of the people in the impartial distribution of justice still remains entire ; so much so, indeed, that he who takes a view of our imperfect code, together with the attachment borne to it by the people, will see that

the honest administration of the law reconciles the country to many defects in the law itself.

The two other powers may be properly called the Executive and the Deliberative. The term Legislative implies merely making laws, which, in no state that I remember, has been totally disjoined from the Executive. These two powers are, in fact, in every constitution, continually influencing and acting upon each other. In Parliament composed of King, Lords, and Commons, resides the supreme government of this nation: the two Houses of Parliament constitute the great council of the King; and upon whatever subject it is his prerogative to act, it is their privilege, and even their duty, to advise. Acts of executive government, however, belong to the King; and should Parliament not interfere, his orders are sufficient. In legislation, nothing is valid, unless by the concurrence of all three.

The three branches of the legislature form what has been called the balance of the constitution: it would have been more just to

have compared them to what is called in mechanics a combination of forces ; for the combined impressions received from the three powers decide the direction of the whole.

The House of Commons, as it has before been observed, were intended to represent the people at large ; and up to the time of the Revolution, they had been found to do so sufficiently well. Even the pensioner parliament of Charles the Second had, in its last days, spoken fairly the sense of the people. At this time, therefore, the House of Commons may be considered as a just representative of the nation.

The next element of the legislature was the House of Lords.

The Peerage serves two great purposes in our constitution.

First, it is a great and splendid reward for national services, whether by sea or land, in the king's council, or on the judge's bench : it places a stamp upon eminent merit, and constitutes the posterity of the ennobled person

a perpetual image of his achievements, and their recompence. Secondly, the House of Peers collectively form a council for weighing, with greater caution and deliberation, the resolutions of the House of Commons. If the more popular assembly is sometimes led away, as it is natural it should, by sudden impressions or temporary clamour, this hereditary senate may interpose its grave and thoughtful opinions, to suspend the effect of an intemperate vote. In the possession of such an assembly, indeed, consists the difference between a constitution of pure democracy, and one of mutual controul. — North America, therefore, which is strictly a government of mutual controul, is not without its senate, as well as its house of representatives.

Such is the Parliament or deliberative power of England.

The next object of importance to a state is, to place in hands, worthy to hold it, the power of negotiating treaties ; of deciding upon foreign relations ; of directing, in time of war,

the operations of fleets and armies ; and, in short, all that is called the Executive Power. This power has been generally disposed of in one of two ways.

The first is, that of putting it into the hands of one person, called an Emperor, Sultan, or King, without any controul. The obvious disadvantage of this mode is, that talent is not hereditary ; and, as it was well put by Lord Halifax, “no man chuses a coachman because his father was a coachman before him.” It is a necessary consequence of this form of government, that the peace and security of the state entirely depend upon one ill-educated man ; for it is extremely difficult, if not impossible, that a king should receive a good education. All his passions, and all his follies, are indulged ; his ignorance is called genius, and his imbecility wisdom. But, above all, no object can be offered to him that can excite labour or emulation. Other men, whether nobles or ploughmen, can only be distinguished from amongst their equals by the excellence of their

moral character, the superiority of their talents, or the advantages they have derived from industry. But a king, without any exertion, moral or intellectual, is placed above every one. Hence, in utter dearth of all useful ambition, he tries to be celebrated by drinking, or fiddling, or some other art of easy attainment; or else, which is much worse, he aims at fame by commanding armies, and destroying provinces. The state, in the meanwhile, totally under his guidance, becomes weak with his weakness, vicious with his vice, poor with his extravagance, and wretched from his ambition. Absolute monarchy, then, is a scheme for making one man worse than the rest of the nation, and then obliging the whole nation to follow his direction and example.

The other method of government, which is at least more plausible, is that of putting the executive power in the hands of a citizen, elected to that office for a certain period of time, and subject to the controul of the people at large.

The inconvenience of this method is, that he who has once attained to so high a station, and has become in undisputed pre-eminence the first person in the state, naturally endeavours to retain power for a longer time than it was granted, and even for his life. But even if he should unite, what is very seldom united, a desire of performing great actions with a just fear of infringing the liberties of his country; yet the minds of men are naturally so suspicious, that, no sooner has a citizen raised himself above his fellows, than they suspect him of a desire of making himself absolute, and lose his services, that they may not be obliged to pay them with their liberty. On one or other of these rocks, if not both, nearly all democracies have split. Athens banished her best citizens by the ostracism. Rome drove from her, Camillus, Coriolanus, Marius, and, above all, Scipio; and yet fell at last a victim to Cæsar's military power, and his ambition to be king. Holland, after numerous contentions, sunk under the sovereignty of the

lished reverence paid to majesty, form a complete bar to any great man who might wish to make himself absolute. So confirmed is public opinion, that a victorious general never dreams of overthrowing the liberties of his country. The Duke of Marlborough was dismissed from his command as easily as an ensign; and the Duke of Wellington returned from all his victories and pre-eminentnes to occupy an office of inferior importance, in a cabinet which had not to boast either of singular popularity or commanding genius.

But whilst the King's prerogative forms on the one side an almost invincible barrier to the ambition of any subject, who might wish to become sovereign of the state in which he was born a citizen, it is on the other side quite open to the general controul of the people. Thus the King has, by his prerogative, the command of the army; but that army is only maintained by virtue of a law to punish mutiny and desertion, passed from year to year. The

King has a right to declare war ; but if the House of Commons deny supplies, he cannot carry it on for a week. The king may make a treaty of peace ; but if it is dishonourable to the country, the ministers who signed it may be impeached. Nor is the King's personal command any excuse for a wrong administration of power. The Earl of Danby was impeached for a letter which contained a postscript in the King's own hand, declaring it was written by his order. The maxim of the constitution is, that the King cannot act without legal advisers ; and so far is this maxim carried, that a commitment by the King, although he is the fountain of justice, was held to be void, because there was no minister responsible for it.

From the doctrine of the responsibility of ministers, it follows that they ought to enjoy the confidence of the Commons. Otherwise their measures will be thwarted, their promises will be distrusted ; and finding all their steps

obstructed, their efforts will be directed to the overthrow of the constitution. This actually happened in the reign of Charles I. and Charles II. There was but one mode of preventing a recurrence of the same evil. It was by giving to the King a revenue so limited, that he should always be obliged to assemble his Parliament to carry on the ordinary expences of his government. On this point, more important than any provision of the Bill of Rights, a warm contest took place at the Revolution in the House of Commons. The Tories, wishing to please the new King, argued, against all justice and reason, that the revenue which had been given to James for his life belonged *de jure* to William for his life. The Whigs successfully resisted this pretension; and passed a vote, granting 420,000*l.* to the King, by monthly payments. The Commons soon afterwards had all the accounts of King James's reign laid before them. It appeared that his government, without any war, cost, on

an average 1,700,000*l.* a-year ; a revenue of only 1,200,000*l.* a-year was given to William, with the expences and debt of a formidable war to be provided for.

By this arrangement, the crown was made dependent on Parliament ever after. Without even offering any advice, by a mere symptom of an intention to stop the supplies, the whole system of the King might be defeated, and his ministers dismissed from the council-board. Hence the House of Commons has the power to controul most certainly and effectually the acts of the supreme magistrate. Whatever struggles have been made since, have been made within the House of Commons. Ambitious men, instead of attempting, according to their several views, to abolish the monarchy, or dispense with Parliaments, have either sought to reach the King's closet through the favour of the people's representatives, or to serve the crown by corrupting that assembly, and poisoning the sources from which their authority was derived. But whatever may

have been said of the prevalence of the latter of these methods of government, it is certain that, for some time after the revolution, power was retained longest by those statesmen whose political principles were stamped by the approbation of their country. A friend of liberty was no longer forced to the alternative of defying the authority of his sovereign, or perishing by the axe of the executioner ; the same sentiments which he had spoken to the people, he was able to repeat to the King ; and the same measures which he had recommended as an individual member of Parliament, he was afterwards empowered to propose, as the adviser of his sovereign. Thus harmony was produced between the different, and hitherto jarring parts of our constitution ; while the means by which that harmony was attained gave, at the same time, a vent to emulation, liberty to the people, authority to Parliament, and stability to the throne. In this manner were the great and venerable principles of English liberty brought into action

by the revolution of 1688, whose authors, unambitious of the fame of founding a new form of government, obtained for the nation the full benefit of those venerable rights and liberties, for which their ancestors and themselves had toiled and suffered. This great work, thus gloriously completed, was at once a lesson to the great to avoid oppression, and to the people to practise moderation.

We have now gone through the different parts of that form of government which some paradoxical men have had the conceit to undervalue. Those who have been shaken by nothing that they have read in history, and who still maintain that liberty cannot flourish under our barbarous and feudal monarchy, may yet perhaps be struck by the following passage from an impartial judge.

M. de Talleyrand, in speaking of America, after remarking the partiality which the Americans entertained for English maxims and manners, goes on thus: — “Nor should one

be astonished to find this assimilation towards England in a country, the distinguishing features of whose form of government, whether in the federal union, or in the separate States, are impressed with so strong a resemblance to the great lineaments of the English constitution. Upon what does individual liberty rest at this day in America? Upon the same foundations as English liberty; upon the Habeas Corpus and the trial by jury. Assist at the sittings of Congress, and at those of the legislatures of the separate States; attend to the discussions in the framing of national laws: whence are taken their quotations, their analogies, their examples? From the English laws; from the customs of Great Britain; from the rules of Parliament. Enter into the courts of justice: what authorities do they cite? The statutes, the judgments, the decisions of the English courts. To no purpose do the names of republic and of monarchy appear to place between the two governments distinctions

which it is not allowable to confound: it is clear to every man who examines his ideas to the bottom, that in the representative constitution of England, there is something republican; as there is something monarchical in the executive power of the Americans."

## CHAP. XV.

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LAWYERS.

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Rex sub lege.

BRACON.

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AMONG other cavillings at the practice of our constitution, there has been raised a cry against the influence of lawyers. From the earliest times, however, that influence has been felt, and felt most beneficially for the country. Bracton, who was a judge in the reign of Henry III., and much more Fortescue, who was chief justice in that of Henry VI., are among the earliest authorities in favour of the liberties of the country. In the beginning of the contest with the Stuarts, the names of Coke and Selden appear with auspicious lustre on

the side of freedom. In the second contest with the Stuarts, among a host of lawyers, with the venerable Sergeant Maynard at their head, appears the virtuous, the temperate, the wise and venerated Somers. From him we pass to Lord Cowper, a Whig chancellor, who yet opposed the bill of pains and penalties against Atterbury, as an unnecessary violation of justice. The next in succession, as a friend to liberty, is Lord Camden, who, by his admirable judgments on the question of general warrants, and on libel, saved the country from the slavish doctrines with which it was threatened to be inundated.

In the House of Commons the members who have taken a chief part in the debates have generally been lawyers. This is the natural result of their habits of speaking, and we see them on one side of the House as well as on the other. On the side of freedom we may reckon a series of bright names, that began with the beginning of our constitution, and, I trust, will only close with its termination.

It were needless to come down to present times, were it not that I should be sorry to omit any opportunity of expressing my admiration for that great genius whose sword and buckler protected justice and freedom, during the disastrous period of the French Revolution. Defended by him, the government found, in the meanest individual whom they attacked, the tongue of Cicero, and the soul of Hambden; an invincible orator, and an undaunted patriot. May the recollection of those contests, and those triumphs, brighten the last days of this illustrious man, and excite those who have embraced the same studies to seek for a similar inspiration!

Such instances might persuade us that the study of the law, by giving men a better knowledge of their rights, gives them a stronger desire to preserve them, and by affording them a nearer view of our constitution, enables them the better to appreciate and cherish its excellencies. Unfortunately, however, there are instances on the other side, of men who, attracted

by the brilliant rewards in the profession of the law, which the Crown has to give, have made themselves the tools of tyranny and corruption. But this is by no means an exclusive attribute of lawyers. The mean lord Strafford, who sold his country for an office and a peerage, was a country gentleman; and the false Lord Bolingbroke, who betrayed his benefactor, and endeavoured to restore a race of despots, was a wit and a man of fashion.

## CHAP. XVI.

RISE OF PUBLIC CREDIT UPON THE BASIS OF  
A FREE CONSTITUTION.

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I know nothing more remarkable in the government of Genoa than the bank of St. George, made up of such branches of the revenues as have been set apart, and appropriated to the discharging of several sums that have been borrowed from private persons during exigencies. They have never thought of violating public credit, or of alienating the revenues to other uses than to what they have been thus assigned.

ADDISON's *Remarks on Italy*.

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SOON after the restoration of Charles the Second, a scheme was proposed to him by Sir George Downing, the whole merit of which consisted in laying down a rule for the exact and regular payment of interest for all money the King should borrow. With the view of affording to merchants security for the per-

formance of this agreement, Downing, with the consent of the King, introduced a clause into a bill of supply, appropriating to the different purposes therein mentioned, the money granted in the bill. Clarendon, who relates the affair, was highly indignant at this new check upon the prerogative, and along with others, remonstrated in strong terms with the King. The rest of the story I will relate in Clarendon's own words. "He (king Charles) enlarged more in discourse, and told them, 'that this would be an encouragement to lend money, by making the payment with interest so certain and fixed, that there could be no security in the kingdom like it, when it should be out of any man's power to cause any money that should be lent to-morrow, to be paid before that which was lent yesterday, but that all should be infallibly paid in order ; by which the Exchequer (which was now bankrupt and without any credit) would be quickly in that reputation, that all men would deposit their money there: and that he hoped in a few

years, by observing the method he now proposed, he would make his Exchequer the best and the greatest bank in Europe, and where all Europe would, when it was once understood, pay in their money for the certain profit it would yield, and the indubitable certainty that they should receive their money.' And with this discourse, the vain man (Sir George Downing) who had lived many years in Holland, and would be thought to have made himself master of all their policy, had amused the King and his two friends, undertaking to erect the King's Exchequer into the same degree of credit that the bank of Amsterdam stood upon, the institution whereof he undertook to know, and from thence to make it evident, 'that all that should be transplanted into England, and all nations would sooner send their money into the Exchequer, than into Amsterdam, or Genoa, or Venice.' And it cannot be enough wondered at, that this intoxication prevailed so far that no argument would be heard against it, the King having

upon those notions, and with the advice of those counsellors, in his own thoughts new modelled the whole government of his Treasury, in which he resolved to have no more superior officers. But this was only reserved within in his own breast, and not communicated to any, but those who devised the project, without weighing that the security for monies so deposited in banks is the republic itself, which must expire before that security can fail ; *which can never be depended on in a monarchy, where the Monarch's sole word can cancel all those formal provisions which can be made,* (as hath since been too evident) by vacating those assignations which have been made upon that, and the like acts of parliament, for such time as the present necessities have made counsellable ; which would not then be admitted to be possible.” \*

From the above passage of Lord Clarendon, it is evident he thought public credit incom-

\* Clarendon Hist. Reb. Vol. i. p. 516, 317.

patible with arbitrary monarchy. His opinion was fully justified by the subsequent conduct of the King, whom he counselled. Charles II. was accustomed to borrow money from the bankers, payable on receipt of the taxes, very much in the manner of our present exchequer bills, but at 8 or 10 per cent. interest, instead of 4 or 5. At the commencement of the second Dutch war, when the taxes came in, he closed the door of the exchequer, and refused to pay. Such conduct, it is evident, must be quite fatal to so sensitive a plant as public credit, which can only grow under the temperate influence of just and free laws. The infamy of this swindling transaction of Charles, was in some measure repaired in the reign of William the Third, when a large portion, at least of the sum owing, was funded as stock, and made to form part of the national debt.

With the revolution came an expensive war against the most powerful monarch in Europe, and the nation had to support the choice it had made of a sovereign by sacrifices of every

kind. In this situation, the party that governed the country, bethought themselves of making use of those resources of public credit, which had already been found of powerful effect in Holland, and in Venice. The bank of England was established a few years after the revolution. About the same time, the silver currency was restored to a just standard, a measure which for a time created a scarcity of coin in the country : a general stoppage of trade took place ; and the paper of the bank of England, soon after its establishment, fell to 20 per cent. discount. In order to remedy these evils, Mr. Montague, Chancellor of the Exchequer, who may be considered the founder of our financial system, collected all the debts out-standing, which amounted to five millions, imposed taxes for the payment of the whole, and in order to relieve the want of currency, issued bills payable on the receipt of the taxes, since called Exchequer bills. Public credit revived, the capital of the Bank

was increased, and the currency became sufficient for the wants of the country.

From this time loans were made of a vast increasing amount with great facility, and generally at a low interest, by which the nation were enabled to resist their enemies. The French wondered at the prodigious efforts that were made by so small a power, and the abundance with which money was poured into the treasury. They saw, to their dismay, that while Louis could hardly obtain, by the most humiliating means, sums sufficient to provide his armies; Great Britain, firm and undismayed, found for ever fresh resources in the wealth and confidence of her merchants. Books were written, projects drawn up, edicts prepared, which were to give to France the same facilities as her rival; every plan that fiscal ingenuity could strike out, every calculation that laborious arithmetic could form, was proposed, and tried, and found wanting; and for this simple reason, that in all their projects drawn up in imitation of England,

one little element was omitted, *videlicet*, her free constitution.

All the money voted by the House of Commons is, at present, strictly tied up to special purposes, by an act of appropriation passed at the end of every Session of Parliament: the very measure which excited the loyal horror of Lord Clarendon.

## CHAP. XVII.

## PARTY.

**P**arty is a body of men united, for promoting, by their joint endeavours, the national interest, upon some particular principle, in which they are all agreed. Men thinking freely, will, in particular instances, think differently. But still, as the greater part of the measures which arise in the course of public business are related to, or dependent on, some great *leading general principles in government*, a man must be peculiarly unfortunate in the choice of his political company if he does not agree with them, at least nine times in ten. And this is all that ever was required for a character of the greatest uniformity and steadiness in connection. How men can proceed without connection at all, is to me utterly incomprehensible. Of what sort of materials must that man be made, how must he be tempered and put together, who can sit whole years in Parliament, with five hundred and fifty of his fellow-citizens, amidst the storm of such tempestuous passions, in the sharp conflict of so many wits and tempers, and characters, in the agitation of such mighty questions, in the discussion of such vast and ponderous interests, without seeing any one sort of men, whose character, conduct, or disposition, would lead him to associate himself with them, to aid and be aided in any one system of public utility?

BURKE.

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THE reign of Queen Anne is as remarkable for the violent contentions as that of George I. for the complete ascendancy of party. It is

worth while to consider the effects both of the contention and the triumph. Let us, first, however, endeavour, in a few words, to explain the existence of party-divisions, and to vindicate the integrity of those who avow that they belong to party. The general defence of political connexion, indeed, may be left where Mr. Burke has placed it. There can be nothing more striking, or more sound, than his writings on this subject. But although his reasoning never has been, and never can be answered, a certain degree of favour still attends the man who declares himself not to belong to party; as if he were clearing himself from the imputation of dishonesty or selfishness.

The division of England into two great parties began, as I conceive, and still continues, in consequence of wide and irreconcileable differences of opinion.

The Tories look upon the exaltation of the Crown as the favourite object of the constitution. Allowing, as they now do, perhaps, that the King is entrusted with his power for the

public good, they yet think that public good requires he should be unfettered in the exercise of his prerogative, so far as the law permits. While he remains, therefore, within the legal bounds assigned to him, they are, to say the least, extremely unwilling to control his power. If he steps beyond them, or places the country in great danger, they are ready to oppose the Crown by their votes in Parliament, or in any other legal manner. It follows from their doctrine, however, that their tendency always is to support the King in the first place, in all his measures, and to refuse their sanction only when those measures have placed the country in peril so imminent, that they are obliged reluctantly to disclose their own opinions.

The Whigs look towards the people, whose welfare is the end and object of all government. They maintain, that as the King's advisers are responsible for his measures, it is the duty of Parliament to examine and pronounce whether those measures are wise and salutary. They are, therefore, ready to interfere with any

exercise of the prerogative, which they think unwise or improper ; and to insist (too haughtily, perhaps, at times) upon the adoption of that line of policy which they consider as best adapted to the wants and state of the country.

Such appears to me a just general representation of Whig and Tory opinions. I know that the Tory doctrine is not now so much avowed as formerly, but it animates more than ever, if possible, the views and conduct of that party.

If I have made a fair statement, it was inevitable that the two parties should separate, and remain divided.

Let me now suppose a young member of Parliament coming to London at the beginning of the reign of Queen Anne. He adopts, if you please, the general opinions of the Tories. He votes generally, but not always, with that party. He naturally becomes acquainted with some of them. He talks over the questions that are coming on for some time before.—

These conversations lead to a more intimate union : his opinions are listened to, and his doubts melt away in the course of amicable discussion. Sometimes, when the measure is one of party policy rather than of principle, he surrenders his own opinion to that of the statesmen most respected by the society of which he is a member. He thinks it more probable that several able, and a large body of patriotic men, *arguing from the same principles as himself*, should form a right decision, than that he alone in the whole House of Commons should, from given general principles, have derived a true conclusion. He is, in short, a party man. Thus it is, that, without any violation of conscience, party is formed and consolidated, and men acquire that kind of "*esprit monacal*" which, according to the remark of a very sagacious foreigner\*, prevails in the political confederacies of England.

Let us now proceed to the effects of party contests.

\* The Abbé Galiani.

Among the bad effects of party is to be reckoned the want of candour it necessarily produces. Few men can enter into the heat of political contention, backed by a body of friends, who animate and support each other, without attributing to their adversaries intentions and motives of which they are no more capable than themselves.

Another evil is, that men become unwilling to give way to the natural bent of their minds, when their understandings would lead them to admit any error upon which their adversaries have insisted, or to render them liable to reproach for weakness and inconsistency. Obstinatey in supporting wrong, because an admission of what was right and true would give a triumph to opposition, has led many a minister of England into a course most injurious to the country.

In attributing this evil to party, I by no means intend to lay upon the same cause the blame of the exaggeration which accompanies political discussion. Such exaggeration I be-

lieve to be inevitable. It is true, indeed, that every statesmen has often occasion to weigh with some degree of doubt the reasons for or against a measure which he afterwards supports or opposes, with as much warmth and confidence, as if there could not be two opinions on the subject; but it does not follow that it would be right or useful to produce in public all the arguments which have gone through his mind before he came to a decision. What would be the effect, for instance, of the speech of a minister proposing an address in support of a new war, who should lay a stress upon the hazards it would be attended with, and the new burthens it must infallibly produce? Nothing, it is evident, but discouragement, and perhaps a disgraceful treaty. For the slightest words which a man lets fall in opposition to his ultimate opinion, are of more weight against that opinion than the strongest arguments he can use in its favour. Those who agree with him are all disheartened, and those who differ from him are all encouraged. Nor

does this proceed from the factitious spirit of party, but from nature herself. Human affairs are so constituted, that the truth scarcely ever lies entirely on one side ; and the human mind is so formed, that it must either embrace one side only, or sink into inaction.

Nor do I impute to party the corruption by which votes in Parliament are obtained. Some persons, I know, imagine that the minister has recourse to corruption only because it is necessary to strengthen himself against the Opposition. But it is evident that, in a free government like ours, the ministers will always make use of the influence of money and patronage that is in their hands to procure themselves adherents. For a minister knows very well that he must have adherents. He cannot reasonably found his administration on the support which he may be able to obtain by his arguments in favour of each particular measure. Now of the two ways of procuring adherents, — the attachment of interest, and that of party, — party is by far the best. Many

a man, I fear, would abandon his opinions, and fall off from his principles, for the sake of office, who yet will not desert a party to which he is engaged by passion and affection as well as by reason.

Party, therefore, instead of being the cause of corrupt and undue influence, is often a substitute for it. Some, indeed, think it possible that the world may be governed by pure intention and the force of argument only. But it is well said by Mr. Wilberforce, when speaking of religion, “ Man is not a being of mere intellect. *Video meliora proboque ; deteriora sequor,* is a complaint which, alas ! we might all of us daily utter. The slightest solicitation of appetite is often able to draw us to act in opposition to our clearest judgment, our highest interests, and most resolute determination.” “ These observations,” proceeds the enlightened author, “ hold equally in every instance according to its measure, wherein there is a call for laborious, painful, and continued exertions, from which we are likely to be deterred

by obstacles, or seduced by the solicitation of pleasure. What, then, is to be done in the case of any such arduous and necessary undertaking? The answer is obvious:— You should endeavour not only to convince the understanding, but also to affect the heart; and for this end you must secure the reinforcement of the passions.” \*

The good effects of party in this country are numerous and weighty. One of the chief of them is that it gives a substance to the shadowy opinions of politicians, and attaches them permanently to steady and lasting principles. The true party man finds in his own mind certain general rules of politics, like the general rules of morals, by which he decides every new and doubtful case. The belief that those principles are just, enables him to withstand the seductions of interest, and the ingenuity of projects: his conduct acquires somewhat of the firmness of integrity and wisdom.

\* Wilberforce’s Practical View of Christianity, p. 60.

The union of many in the same views enables a party to carry measures which would not otherwise gain attention. There is many a proposition eminently useful, yet not calculated to catch popular favour, which, by the stout and strong working of a party, at length becomes law; that which is an overmatch for the strength of an individual, is accomplished by the united force of numbers. The waggon arrives at last at its destination; but a loose horse will probably return to the place from which he set out. It likewise sometimes happens, that party succeeds where the people have failed. The enthusiasm of a whole nation is in its nature evanescent. If successfully resisted at first, it often sinks into apathy, and the country remains passive, though not satisfied, under the weight of a defeat. But a party is pledged; the character of the individuals belonging to it depends upon their consistency; their principles are handed down from father to son, and become the mould from which successive generations receive the

form and pressure of their politics. It may be observed, on the other side, that many instances can be quoted of parties, who, on coming into power, have contracted and shrunk from their original professions ; but they are not so frequent as those of a complete and radical change in the popular voice with respect to the objects of its predilection or aversion.

The greatest benefit of all that is conferred by party is, perhaps, that it embodies the various opinions of the nation for the time being. Those opinions are at times so violent, that had they not a vent in Parliament they would break the machine to pieces. Happily the people, when they overturned Sir Robert Walpole, placed confidence (a confidence little justified, perhaps,) in his opponents ; and when Lord North appeared to have ruined every thing, the nation looked for safety to Lord Rockingham and Mr. Fox. There may be a revolution in this country ; but it is hardly possible that the country should not first try what may be done by a change of counsels.

Thus the great and final reason of nations, the right of resistance, is not likely to be used till better and safer means have been tried. To possess such means is a great advantage for the nation which can employ them.

In reckoning up the bad effects of party, I have not spoken of the animosities and violent contentions it produces. Mock philosophers, sentimental women, and effeminate men, are always making lamentations over political divisions, and contested elections.

Men of noble minds know that they are the workshop of national liberty, and national prosperity.

It is from the heat and hammering of the stithy that freedom receives its form, its temper, and its strength.

## CHAP. XVIII.

WILLIAM AND MARY. — ANNE.

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Un roi fait ailleurs entrer aveuglément ses peuples dans toutes ses vues ; mais à Londres un roi doit entrer dans celles de son peuple.

VOLTAIRE, *Siecle de Louis XIV.*

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LET us now proceed to the history of the two parties from the Revolution to the reign of George I.

We have seen that the Whigs refused to grant King William a permanent income that might render him independent of his people ; and he dissolved the Parliament in 1690 with some disgust. The next House of Commons was a Tory one ; and Sir John Trevor, a violent Tory, was made First Commissioner of the Treasury. He undertook to distribute

bribes in such a manner as to secure the votes of the majority; being the first systematic corruption after the Revolution. Trevor was afterwards punished for bribery in a question relating to the Orphans' Bill. There arose at this time a violent struggle between the Whigs and Tories for the favour of the King, and the confidence of the people. The dismissal of Monmouth and Warrington attested and established the success of the Tories. They were supported by the small proprietors of land and the gentry of the country, who feared a bias to innovation on the part of the Whigs both in politics and religion. On the other hand, the Whigs were esteemed by the people as having been the original opposers of arbitrary power, and had the credit, as well as the responsibility, of the new settlement. In order to support it, they came forward with their wealth in a time of embarrassment, and also prevailed upon their friends in the city, which was then, as in former times, a strong-hold of liberty, to lend largely to the government. By these

means, the Whigs attached men of great wealth to the establishment, and distinguished themselves to their advantage from the Tories, who were unwilling, or unable, to advance considerable sums. Hence the King, who had placed his confidence in Ranelagh, Rochester, and Seymour, afterwards discovered an inclination to trust the Whigs, raised Somers and Shrewsbury to high situations, and gave his tardy consent to the triennial Bill. After the peace of Ryswick, the Whigs defended the maintaining of the Dutch Guards, in which perhaps they were right, though the line they took exposed them to much popular odium. The defeat of this favourite wish of our deliverer is a proof how extremely weak the royal authority was at this period. It would not be so easy perhaps to defend the Whig party in their transactions respecting a new East India Company. Still less can they escape blame for having suffered in silence the conclusion of the treaty of partition. By this treaty, William imprudently trusted himself to the faith of the French King,

and unwarrantably disposed of the whole of the Spanish monarchy during the life of the reigning sovereign. The partition, thus previously arranged, at once provoked the Spaniards and enraged the Emperor. It was rash in policy, unfounded in justice, and impracticable in execution. With arms thus imprudently furnished by their adversaries, the country party violently attacked the Whigs in the House of Commons : Orford and Somers were removed and disgraced : a Tory ministry was established, and was the last of King William.

Queen Anne came to the throne with violent prejudices in favour of Tory politics, both in church and state, and severe bills against occasional conformity were received with applause by a House of Commons composed chiefly of that party. But the natural inclinations of the Queen yielded to the advice of Marlborough, who, though himself a Tory, became convinced that Lord Rochester would not actively support the war, and that the Whigs alone sympathized with the sentiments of King William,

as expressed in the last speech that he delivered to his Parliament. Feeling that a vigorous opposition to the arms of Louis XIV. could alone save the liberties of Europe, Marlborough advised his mistress to give her countenance to the Whig party. Lord Cowper was made Chancellor; but still the Queen consented, with great reluctance, to the admission into her councils of persons whose politics she detested; and year after year passed in struggles at court to obtain the higher offices of state for Sunderland and Somers. It would not be just to ascribe these demands of the Whig leaders to the mere love of office: their ambition was of a higher kind. They aspired to rule the state according to their own system of policy, and they found that all their efforts were thwarted by the wilful negligence of the Tories, who filled less conspicuous places in the administration. Godolphin tells us, that there was not a Tory in any ministerial office who did not require to be spoken to ten times over before he would execute any thing that had

been ordered, and then it was done with all the difficulty and slowness imaginable. This conduct, so dangerous if not treasonable in the midst of a perilous war, certainly goes far to justify the importunity of the Whigs to remove Sir C. Hedges from the post of Secretary of State, in order to give him a more permanent and profitable but less responsible office.\*

The Whigs held their power by a precarious tenure. The Queen, originally adverse to them, was rendered implacable by their haughty invasion of the cabinet ; and she was daily excited to little acts of hostility by Mrs. Masham, who had succeeded the Duchess of Marlborough in the friendship and the government of her weak head and ignoble heart. There needed only a popular and plausible occasion for discarding the general who rendered the name of England illustrious by his victories, and the statesman whose reputation was founded equally on his wisdom and his love of liberty. The

\* See Conduct of the Duchess of Marlborough. Coxe's Life of Marlborough.

occasion soon happened : Marlborough and Somers fell : Harley and St. John rose upon their ruin : it is thus that when the statues of gods and heroes are thrown down, snakes and reptiles are obtruded into light.

It must be owned, however, that the Whigs gave a handle to the designs of their enemies. The trial of Dr. Sacheverel was needless and imprudent. Under an established government it was not exceedingly wise to proclaim aloud the doctrine of resistance ; nor could there be any great danger in leaving a clergyman of no great station to vaunt his absurdities unmolested. The solemnity of an impeachment, the marshalling of all the forces of the state against a private individual, could not fail to excite afresh that cry in favour of the High Church to which the people have been so much inclined at various times in our history, and which ought to have been allowed to sleep in peace. In consequence of the popularity of Sacheverel, and the well-known opinion of the Queen, a House of Commons was obtained

completely favourable to the Tories. And here begins the history of those last four years of Queen Anne, in which the press was restrained, intolerance favoured, our allies deserted, our enemies encouraged, and a disadvantageous peace concluded. Indeed, had not Queen Anne died before the measures of the Jacobites were prepared, the Elector of Hanover might never have been able to ascend the throne, to which the Act of Settlement had called him.

We have now gone over the struggles of party during the reigns of the first two sovereigns who reigned after the Revolution. They were times in which political integrity was rare, and political animosities violent, but the people was admitted as an umpire between the contending armies ; and, upon the whole, the rise and fall of each seems to have been proportioned to its merits. In so saying, I must except the elevation of Harley and of St. John : men who were base enough to flatter Marlborough for the purpose of lulling and supplanting him,

ought to have remained in the obscurity in which they were originally placed. With this exception, however, the contest between the two parties was a contest between two lines of policy, in which the welfare of the state was involved, and between two great principles, on one or other of which the foundations of the English government must be made to depend. Men of great talents, vast property, and long experience, distinguished themselves on one side or the other; and to whichever party the nation leant, more practical liberty, more personal security, and more tranquillity from religious persecution, (not to mention fame and consideration abroad,) were enjoyed by the people than had ever been known in England.

## CHAP. XIX.

**IMPEACHMENT. — BILLS OF PAINS AND PENALTIES.**

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The Parliament have also power to punish any who judge for man and not for the Lord; who respect persons or take gifts, or any way misdemean themselves in their offices.

WHITELOCKE, *Notes on the King's Writ.*

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IT is absolutely necessary to the preservation of an established form of government, that there should exist a legal method of bringing to punishment those who endeavour to subvert it. For this reason the executive magistrate is always entrusted with the means of proceeding to a trial against persons who conspire against his or their lawful authority. Nor is it of any avail to the rebel, to say that, if he had succeeded, he should then have been possessed

of the authority of the state : it is very true that he would ; it may be true that he would have exercised it better; but until the government is dissolved, it must, to prevent anarchy, inflict severe punishments on those who stand out in open insurrection against it.

In the same way, and for the same reasons, there must exist in a free state a method of accusing those persons who have abused the authority confided to them for the purpose of usurping undue power, or corrupting the citizens, or obtaining ends adverse to the general interest of the community. In this case the discretionary power of proceeding to trial cannot rest with the executive magistrate ; for he is generally the party complained of: it must reside in the popular branch of the state. It is therefore wisely provided in our government, that the House of Commons should have the right of impeachment. This extraordinary power, thus confided to the representatives of the people, enables them to denounce, as guilty of high treason, all who

shall violate the law upon this subject. It enables them to denounce, as guilty of high crimes and misdemeanors, all ministers of state whose conduct is injurious to the interest of the nation. Some very narrow-minded men, I know, have maintained that an impeachment can only lie against an indictable offence ; but this doctrine is in plain contradiction to three out of four of the impeachments which have been brought forward. To take one instance only : — In the case of the ministers who signed the Treaty of Partition, the House of Commons resolved on April 1. 1701, “ That William earl of Portland, by negotiating and concluding the Treaty of Partition, (which was destructive to the trade of this kingdom, and dangerous to the peace of Europe,) is guilty and shall be impeached of high crimes and misdemeanors.” — Now what petty jury could take upon them to say that a treaty was destructive to the trade of England ; or to bring in a verdict of guilty on a charge of endangering the peace of Europe ?

The same thing may be said of the impeachments against Oxford and Bolingbroke for signing the Treaty of Utrecht. Those who argue that impeachments can only be brought for an indictable offence, say, “It is true a jury could not try these offences ; but that is only an objection to the jurisdiction ; every misconduct in office is a misdemeanour at common law.” This answer, it is evident, reduces the difference to nothing ; for if certain offences can be prosecuted by impeachment only, it does not matter whether the cause is to be found in the want of law, or the defect of jurisdiction, to bring them before any other court.

It is impossible for the King to stop the progress of an impeachment. His pardon under the great seal cannot be pleaded in bar of trial. His prerogative of prorogation, or even of dissolution, may suspend, but does not put an end to the proceedings. These two securities for justice were contended for during the trial of the Earl of Danby, in the reign of Charles II. ; the first was established, at the Revolution ;

and the second confirmed during the impeachment of Mr. Hastings.

It is much more difficult, in a free state, to find impartial judges than to find courageous accusers. There can hardly be any body of men who are at once qualified to form an opinion on political questions, and not disqualified by having formed one before they are called upon to judge. This latter fault, it must be owned, is found in our House of Lords. It is difficult, if not impossible, to bring a principal minister before them, on whose conduct they have not already pronounced judgment in their own minds. For this reason we find, that when the Lords are in favour of the accused, Lords and Commons generally conspire to produce a quarrel between the Houses, and thus avoid giving judgment. So it happened in the cases of Lord Danby, Lord Somers, and many others. The experience of later times has not made impeachments more easy in the trial, or more impartial in judgment. The impeachment of Hastings was a long punish-

ment; and in the last case of impeachment the Lords were found to vote more from a sense of gratitude, or a sense of friendship, than a sense of justice; and some came to the decision without having heard a word of the evidence. Impeachment, upon the whole, is rather a scarecrow to frighten public delinquents, than a real security for public justice. — In former times it drove many a bad minister from the council-board; at present that end is attained, when it is attained, by simpler means.

Bills of attainder and bills of pains and penalties, passed by parliament, are of a very different nature from impeachments. They have been generally, if not always, used on occasions of great moment and urgency. Two circumstances seem to be requisite to all bills of this kind. First, That it is impossible to convict the offender by due course of law. Secondly, That his escape would be in the highest degree injurious to the state. Great indeed must be the mischief that would arise from the impunity of a criminal, to over-

balance the evil of shaking the common security of the subject, disturbing the regular course of justice, and affording an example of punishment inflicted on one who cannot be convicted of a crime.

Instances of bills of attainder and bills of pains and penalties are, unfortunately, too numerous on our statute-book. But, in early times, bills of attainder, however unjust their operation in particular instances, had not the character they have at present. Originally, the high court of Parliament was not a court only in name, but was chiefly employed in deciding causes, and particularly in judging all the great criminals whose power placed them beyond the reach of a jury. The offences for which they were condemned were, however, offences of which a jury might legally have taken cognizance. Thus it was with the Spencers, the adherents of Richard III., and others. The reign of Henry VIII. opens to us a more alarming scene. A bill of attainder was passed against Empson and Dudley at the

accession of that King, for the exactions of which they had been guilty, under the reign of his father. As these exactions had been sanctioned by an act of Parliament, there was surely great injustice in condemning those who had acted under it to a capital punishment. The act of attainder was also unnecessary ; for Empson and Dudley had been previously convicted of treason at Guildhall, for an attempt to maintain themselves by force. \* So strong was the popular feeling against them, however, that they probably met with as little justice from a jury as from a parliament.

In the same reign of Henry VIII. Queen Catharine Howard was condemned to lose her head, by a bill of attainder, for incontinency before her marriage with the King. When the bill was in progress, the Lords by the desire of Henry, sent a message to her, to ask her if she had any thing to say in her defence. She, however, confessed her guilt ; and in those times she did not think of complaining

\* State Trials. Burnet's Hist. Reformation.

that she was to suffer death for a crime unknown to the laws.

In the year 1539, a most dangerous precedent was made. The Marchioness of Exeter and the Countess of Salisbury refusing to answer the accusation against them, were attainted by act of Parliament. "About the justice of doing this," says Burnet, "there was some debate; and to clear it, Cromwell sent for the judges, and asked their opinions, Whether a man might be attainted in Parliament, without being brought to make his answer? They said it was a dangerous question. That the Parliament ought to be an example to all inferior courts; and that when any person was charged with a crime, he, by the common rule of justice and equity should be heard to plead for himself. But the Parliament being the supreme court of the nation, what way soever they proceeded, it must be good in law; and it could never be questioned whether the party was brought to answer or

not.”\* The precedent thus begun was made worse, as all bad precedents are, the following year. The person was, however, well chosen: it was Cromwel himself. Instead of declining to plead, he petitioned to be heard; but his request was refused, and an attainder passed on the mere assertion of his enemies.

Of the bill of attainder against Strafford I have before spoken with indignation. There can be no excuse for the manner in which the bill was forced through. It must be observed, however, that few cases of state-necessity can be imagined so strong as that which could be urged for the condemnation of Strafford. Yet some of the moderate among the Presbyterian party†, were for sparing his life; but they were hurried on by others of a more bloody temperament. The bill of banishment against Clarendon had this strong foundation, that he had withdrawn himself from justice: this plea seems to me to be sufficient for such a punishment.

\* Burnet, Hist. Ref. p. 265.

† The Earl of Bedford, Mr. Pym, &c.

Nor am I disposed very greatly to blame the act of attainder against Sir John Fenwick. A person accused of high treason, and about to be tried in the due course of law for that offence, who pretends he is going to reveal his treason, and takes advantage of his fraud to spirit away a witness, seems to me to have removed himself beyond the pale of all law. He has endeavoured to defeat justice, at least as much as if he had himself gone beyond sea.

There is not so much to be said in favour of the bill of pains and penalties against Atterbury. It is urged in justification, that Walpole could have brought evidence enough against him to have convicted him of high treason in a court of law. Whether he could have done so or not, it remains as a stain upon his memory for ever, that, for the purpose of banishing this busy priest, he should have induced Parliament to condemn him upon the evidence of letters not in his own hand, and after the death of the person supposed to have written them.

The protest signed by Lord Cowper and thirty-nine other peers on this occasion contains a sound and satisfactory doctrine on the subject of all bills of this nature.

“ We are of opinion,” say these Lords, “ that no law ought to be passed on purpose to enact that any one be guilty in law, and punished as such, but where such an extraordinary proceeding is evidently necessary for the preservation of the state.”

“ We clearly take it to be a very strong objection to this mode of proceeding, that rules of law made for the security of the subject, are of no use to him in it, and that the conclusion from hence is very strong ; that, therefore, it ought not to be taken up, but where clearly necessary, as before affirmed ; and we do desire to explain ourselves so far, upon the cases of necessity excepted, as to say we do not intend to include a necessity, arising purely from an impossibility of convicting any other way.”

## CHAP. XX.

## GEORGE THE FIRST, AND GEORGE THE SECOND.

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I shall continue, during the short remainder of my life, most steadily attached to the ancient freedom of my country, (as it was practically enjoyed under those honest old gentlemen, George the First and Second), and your grateful servant,

JOHN HORNE TOOKE.

Mr. HORNE TOOKE's *Address to the Electors of Westminster,*  
June 26, 1802.

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THE tranquil accession of the House of Hanover to the throne of these realms is the greatest miracle of our history. The ministry of Queen Anne, great part of the church, and almost all the country gentlemen, were against this violation of all the rules of legitimacy, merely in order to preserve the civil and religious liberty of the country; it was the triumph of the enlightened few over the bigotry of millions.

The accession of George I. was the era when government by party was fully established

in England. During the reign of William, Whigs and Tories had been employed together by the King; and although the distinctions of a Whig ministry and a Tory ministry were more decidedly marked during the reign of Anne, yet Marlborough and Godolphin, who formed great part of the strength of the Whig ministry, were Tories; and Harley and St. John, who put themselves at the head of the Tory administration, had held, a short time before, subordinate offices under the Whigs. But the complete downfall of the Tory Administration, who had signed the peace of Utrecht, and the well-founded suspicion which attached to the whole party, of favouring the claim of James II.'s son, placed George I. entirely in the hands of the Whigs. At the same period, the financial difficulties which followed the winding up of the war, and the great practical talents of Walpole as a statesman, contributed to give a greater importance to the House of Commons than ever, and to place within that house, if I may so express myself,

the centre of gravity of the state. Besides these causes, Speaker Onslow was of opinion, that much weight and authority were added to the House of Commons by the Septennial Act.

We now find, therefore, a party ruling the country through the House of Commons ; a species of government which has been assailed with vehemence, with plausibility, eloquence, and wit, by Swift, and Bolingbroke, and the whole party of Tories in the reigns of George I. and II. ; by Lord Bute and the King's friends in the commencement of the late reign, and by a party of parliamentary reformers in our own time. The sum of their objections to it is this, — That it mixes and confounds the functions of the King with those of the House of Commons ; that the King hereby loses his prerogative of choosing his own servants, and becomes a slave to his powerful subjects ; whilst, on the other hand, the House of Commons, by interfering in the executive government, open their door to corruption, and, instead of being the vigilant

guardians of the public purse, become the accomplices of an ambitious oligarchy. Now this objection, if good, is fatal to our whole constitution ; for we have seen, in reviewing the reign of Charles I., that a King whose servants are quite independent of Parliament, and a Parliament which is adverse to all abuses of power, cannot exist together : submission from one of the parties, or civil war, must ensue.

The question, then, for us to consider, is not whether the government of the two first Princes of the House of Brunswick was a corruption of the English constitution, but whether it was upon the whole a good or an evil.

The first consideration that must strike us is, that, upon the whole, the liberty of the subject was secure. The chief exceptions to this remark are, the suspension of the *Habeas Corpus* Act on Layer's plot, and the attainder of Bishop Atterbury. Of the latter I have already spoken. The suspension of the *Habeas Corpus* Act on Layer's plot has always seemed to me unnecessary ; but it is impossible to form

any correct judgment on this point, and it must not be forgotten that all the chief Jacobites of England were at that time intriguing at Rome to bring in the Pretender. These exceptions to the general liberty of the subject are trifling and temporary; few periods in the history of any nation are so little disturbed by violations of personal freedom as that of the administration of Walpole.

Another remark nearly allied to the former is, that the triumph of party was not marked in England as it has been in nearly every republic that ever existed, ancient or modern, by a cruel and unsparing persecution of their adversaries. The history of the divisions of the parties of aristocracy and democracy in the minor states of Greece,—of the parties of Marius and Sylla, at Rome,—of the Guelfs and the Ghibelines, the Bianchi and the Neri, in Italy,—of the Catholics and the Hugonots in France,—is a history of proscriptions, confiscations, massacres, and murders: but in the reign of the first Prince of the House of Hanover, little severity and still less rancour is

to be found; although many of the Tories were known to be adverse to the protestant settlement, yet little was done against them, besides the banishment of Bolingbroke and Ormond. The temper of Walpole inclined him to mildness and moderation. He knew of many who corresponded with the Pretender, of whom he took no notice. It is said that, one day, Wyndham, or Shippen, made a violent speech, which excited a murmur, and a cry of “Tower!” “Tower!” among his opponents. Sir Robert Walpole rose: “I know the honourable gentleman expects me to move that he be sent to the Tower; I shall disappoint his expectations, however, for I shall do no such thing.”

The strength of Walpole’s administration lying chiefly with the House of Lords and the aristocratic part of the country, he was enabled to carry on for many years a pacific system. Peace, at all times a blessing, was then most desirable. The politic union between the King of England and the Regent of France,

took away all the fears so long inspired by the overgrown ambition of Louis XIV. of seeing Europe enslaved, and a king forced upon us by foreign powers. Thus the country, undisturbed either by invasions of liberty at home, or by wars abroad, enjoyed a respite from the violent contests in which she had so long been engaged. And, upon the whole, the people had reason to be satisfied with their government under the administration of Walpole. Montesquieu and Voltaire, who have most contributed to spread an admiration of the English constitution over the Continent, and to hold it out as a fit model for imitation, took their notions of it from this period. At the same time there was a fault in the general course of Walpole's government, the most fatal of any to the permanence of a spirit of freedom in a nation. With the view of soothing the angry passions which disturbed the early part of his career, he gradually weakened, and had nearly extinguished, every large and liberal feeling in politics. To maintain "our

“happy establishment” was the sole end of his administration; an object which, however praiseworthy, was little calculated to excite vigour of thought, or energy of character. For this, however, no blame is justly imputable to him. What we may complain of, with truth, is, that in his choice of means he showed a low opinion of human nature, and addressed himself rather to the interested views of individuals, than to any public sense of the benefit of the whole. Thus he went on depraving the times in which he lived, and the times again depraving him, till the state was all festered with gangrene and corruption.

The administration of Walpole fell at last, however, chiefly by unjust clamours about merchant-ships, and a general impatience for change. No government can withstand a combination of the stupid and the foolish. In England the Tory party had always had the benefit of the weight and influence of the stupid part of the nation. The unlettered squires, with heads muddled by their own ale, embraced

with cordiality the notion of the divine right of kings. Addison has given a perfect picture of one of them in a number of the *Freeholder*. The dog that has the sagacity to worry a dissenter, the squire's complaints of trade and commerce, and his resolution to resist any government that is not for non-resistance, are characteristic of the Tory country-gentlemen of that day. Even at the time of the dissolution of Walpole's administration, Pulteney, in talking of the disposal of places said, that the Tories, not being men of calculation, or acquainted with foreign languages, did not pretend to the higher offices of the state. The Whigs, on the other hand, had in their origin derived some support from the folly of mankind. The wisdom of Somers, and the steady patriotism of Lord Cavendish, did not excite more enthusiasm than the handsome person of the Duke of Monmouth; and the story of the warming-pan brought as many, if not more adherents to their cause, than the *Habeas Corpus* Act and the Bill of Rights. The fool-

ish were, however, naturally estranged from Walpole by his calm conduct, and the unpretending wisdom of his measures. They united themselves with the stupid, and formed, as might have been expected, an overwhelming majority in the nation.

It is astonishing to see, after twenty-five years of power, how little could be brought against Walpole, even when his enemies were in power. His conduct in the South Sea business, appears upon the whole to have been extremely judicious. Corruption in boroughs to an extent at which their posterity would not blush, is related by the Secret Committee. Large sums, however, are unaccounted for, which his agents persisted in keeping secret. The attempt to indemnify them from all proceedings in order to get evidence from them against their principal, failed in the House of Lords.

The effect of the long stagnation of public spirit in the country is lamentably seen in the changes of ministry which took place after the resignation of Walpole. Principle

seems to have made no part of the distinctions of statesmen ; and all political contention was reduced to a scramble for office, between little bands of men, whose rank and fortune only rendered their conduct more contemptible. Lord Melcombe's diary affords a faithful and very disgusting picture of the manner in which these small factions rose alternately one upon the other, forming every day new combinations, and varying their connexions in every possible way, without ever deviating into an honest and consistent line of public rectitude.

It is singular, and at the same time melancholy to observe, how much influence was retained by a person so totally devoid of clearness of head, and even of common manly spirit, as the Duke of Newcastle. By intriguing to overturn Walpole, his colleague, and by bargaining in boroughs, he became the most powerful amongst the Whigs. But his incapacity and dishonesty were one of the chief causes of the ruin of the party, who did

not for a long time recover the disgrace of having served under such a chief.

There is one man, however, whose life forms an exception to these remarks, and who did much to waken the country from the lethargy into which it was plunged. I mean, of course, Lord Chatham. He was in almost every respect the reverse of Walpole. Walpole lowered the tone of public men, till it became more like that of merchants than of statesmen: Chatham raised his voice against selfishness and corruption, and his invectives even now make the cheeks tingle with indignation. Walpole acted upon the love of ease, the prudence, and the timidity of mankind: Chatham appealed to their energy, their integrity, and their love of freedom. It must be acknowledged, that Walpole had some merits which Lord Chatham wanted. He pursued from the beginning one steady and, upon the whole, useful line of state-policy: Lord Chatham acted from the impulse of the moment; and if he followed his feeling of the day he

little cared how inconsistent it might be with his former sentiments. Walpole seemed to aim at what was most expedient, Chatham at what was most striking ; the former secured the guarantee of France to the Protestant succession ; the latter attacked her possessions and humbled her name. Walpole looked to prosperity, Chatham to glory ; the one carefully amassed the means which the other magnificently dissipated. Sir Robert Walpole was successful nearly to the end of his life. The cause of his long power is to be found both in the steadiness of his conduct, and his care to unite together a large and respected party in favour of his government. Lord Chatham succeeded in nothing after the accession of George III. He had neither sufficient consistency of character to inspire confidence in those who were to act with him, nor did he set a proper value on the importance of party in this country. If Walpole had thought too much of individuals, Lord Chatham consulted them too little. Provided he made up his

mind to a measure, he seems to have thought that he could always find men to carry it into effect. His temper made him reject or quarrel with those who were best fitted by integrity and general views to assist him, but who differed with him in the smallest point; and he sought aid from others who flattered, ridiculed, betrayed, and supplanted him.

Hence it was that the political character of England was not raised out of the mire into which it had fallen, by the splendid talents, generous virtues, and lofty views of the first William Pitt, Earl of Chatham.

## CHAP. XXI.

GEORGE THE THIRD — BEGINNING OF HIS  
REIGN.

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Moreover, I have a maxim, that *the extinction of party is the origin of faction.*

*Letter of HORACE WALPOLE to Mr. Montague, Dec. 11. 1760.*

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WHEN George III. came to the throne, little apparent alteration took place in the internal government of the country. An act was passed to continue the judges in their offices notwithstanding the demise of the crown. Although it was obvious that such an act diminished in no way the power of George III., but on the contrary, took away one means of influence from the successor, if that successor should

act in opposition to the reigning king, yet this measure was represented as an act of unparalleled generosity on the part of the young king: but, as a proof of royal patriotism, it is nothing ; and, as an addition to the liberties of the subject, it is scarcely worth mentioning. The Act of William III., which made the judges independent of the pleasure of the crown, and gave them their offices during good behaviour, was the true security for their independence. What has been done since has been merely putting columns upon the abutments of an arch.

The important feature of the new reign was the experiment of a new project of government. Among other disastrous consequences of the want of public spirit in England, was a total neglect of the political education of the young King : hence he came to be placed in the hands of men who had but recently shaken from their minds their allegiance to the house of Stuart. It occurred to these persons that, in the general blight of political virtue, and public confidence, an opportunity was afforded

for raising the household standard of the sovereign, and rallying around his person the old relics of the Jacobite party, with the addition of all, who, in the calculation of chances, might think the favour of the sovereign as good an interest as the countenance of any minister whatever. To form and consolidate this party they studiously spread all the doctrines which place the whole virtue of a monarchy in the supreme sanctity of the royal person. They endeavoured to obtain a certain number of seats in the House of Commons, which, with the help of a proportionate quantity of patronage, might make the tenure of any ministry uncertain. They made loud professions of honesty and of conscience, which, when examined, wholly consisted in an obstinate adherence to certain narrow-minded tenets, and did not prevent the most shameful violations of sincerity and truth, whenever it suited their purpose to deceive and to betray. They assiduously planted their maxims of government in the mind of their royal

pupil, and as he was naturally slow, obedient, good-tempered, and firm, he too easily admitted, and too constantly retained the lessons of his early masters.

Almost every thing conspired to favour the projects of this mischievous faction. The disunion of the Whigs; the contemptible character of the Duke of Newcastle; the decay of Jacobitism; the predilection of the people in favour of the young king, the first of his family born in England, all strengthened the new sect. The prejudice of the nation against Lord Bute, as a Scotchman, was the only set-off against a host of favourable circumstances.

The system had flourished for some years in full vigour, when Mr. Burke gave the powerful exposition, and the sound and statesman-like refutation of it, which we read in the “Thoughts on the present Discontents.” This, which is one of the few standard works on the science of government which the world possesses, did not, and could not immediately destroy the monster which it attacked. But

it rendered a service to this country scarcely less essential, by instilling into the minds of all young politicians, who at that time were greatly increasing in number throughout the country, those wise and beneficial principles which their Whig ancestors had practised, but which the old intriguers of that day had entirely forgotten.

## CHAP. XXII.

## THE SENSE OF JUSTICE.

Sous quelque idée de légèreté et d'inconsideration qu'on se plaise à nous representer le peuple, j'ai éprouvé que souvent il embrasse à la vérité, certaines vues, vers lesquelles il se porte avec chaleur, ou plutôt avec fureur ; mais que ces vues ont pourtant toujours pour objet quelque intérêt commun, et d'une certaine généralité, jamais un intérêt purement particulier, comme peuvent être les ressentimens et les passions d'un seul homme, ou d'un petit nombre de personnes. Je hasarde même de dire, que sur ce point, le juge le moins faillible est la voix de ce peuple même.

SULLY, l. 14.

ONE of the conditions necessary for the maintenance of that species of freedom which excludes all arbitrary power, is, that the people should be ready to take part with the weak oppressed, against the powerful oppressor. Madame de Stael remarks of the French people of her own day, that they perceive imme-

dately where power lies, and always range themselves on that side. The truth of this observation may be demonstrated by referring to the events of the Revolution, or attending to what happens in any one year in France. The quality essential to freedom, however, is one directly the reverse. The people ought to feel a continual jealousy of power; and when they see any one man borne down unjustly, they ought to perceive immediately, that the cause of that man is the cause of the whole nation.

This is or was happily the case with the English people. Nothing but the sympathy of the people could have raised to such importance and celebrity the cause of Hampden, when he refused to pay a few shillings to the crown. The imprisonment of a Mr. Francis Jenkes, for making a patriotic speech in the Common Council of London, roused the indignation of all lovers of their country, and was the immediate cause of the Habeas Corpus Act. Mr. Wilkes, though detested and de-

spised by good men, as a hypocrite in public and a profligate in private life, was defended by all who loved their country, when arbitrary measures were resorted to for the purpose of oppressing him. He was arrested by virtue of a general warrant, wherein his name was not mentioned, and he was designated only as the author of the *North Briton*, No. 45.— At the same time his papers were seized, and he was by this means discovered to be the author of an obscene libel, called the “*Essay on Woman*.” It is evident, that the authority to issue general warrants, was a very dangerous power, and might have been used to renew those arbitrary arrests which took place under the Stuarts. Hence all the friends of freedom espoused the cause of Wilkes. Lord Chatham, then Mr. Pitt, spoke with abhorrence of the man and of his works, but with indignation of the means that had been used to oppress him; and the country who would have rejoiced to have seen him legally punished, would not allow him to be

unjustly persecuted. They felt not for Wilkes, but for the law ; they would have praised the jury which convicted him ; they censured the minister who oppressed him ; and in the cry of Wilkes and Liberty, they adopted a contemptible person for the sake of a sacred principle. A motion against general warrants was defeated by a small majority in the House of Commons ; but Wilkes obtained at length large damages against the ministers who had abused their power, and put an end to general warrants for ever. So, I trust, it may always be, when any individual, however humble, however odious, or however despicable, is pursued by illegal or unjust methods !

## CHAP. XXIII.

OF AN EXTREME REMEDY AGAINST THE ABUSES  
OF POWER ; AND OF MODERATION IN THE USE  
OF THE REMEDY.

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..... Esto  
Liberque ac sapiens. PERSIUS.

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EVERY wise state has found it expedient to transfer a large portion of power out of the hands of the people, for whom all power is held, and to entrust it to a single person, or select council ; for a very numerous body are found incapable of transacting public affairs with that secrecy, or of deciding upon them with that celerity which the foreign relations of a state so often require. Hence the

great council of Venice was, by the advice of the wisest senators, excluded by degrees from all deliberations which required delicacy and dispatch.\* Hence the republic of Holland found it necessary to name a few persons, to whom all foreign negotiations were confided.†

But for whatever purpose power may be confided to a few persons, or however worthy they may be of the trust reposed in them, human nature is such, that there ought always to remain with the people an extreme remedy by which they may punish the abuse, or restrain the power itself that has been abused. In states really free this extreme remedy will always be found to exist, either by custom or by law. Thus the Roman people, when they felt themselves aggrieved, retired to the *Mons Sacer*, or refused to be inscribed as soldiers in the army that was about to march against the foreign enemy. There could not be apparently two more dangerous expedients ; but such was

\* Daru, Hist. de Venise.

† Sir W. Temple.

the moderation of the Roman people, that I know not they ever pushed their resistance beyond the bounds of reason. Indeed, the long period that elapsed before the plebeians could be elected to any office in the state, and the many years that followed after the law passed allowing them to be military tribunes, before any plebeian was really chosen, are sufficient proofs of their temperance, both in advancing a claim, and in making use of a right.

The English have, in the same manner, an extreme remedy. If the King abuses a just, or uses an oppressive power, the representatives of the people have it in their option to refuse the money required to carry on the government. This remedy, however, was for a long time far from being so efficacious as those employed by the Roman people. In spite of the resistance of the nation, Charles II. and James found means, with the aid of packed Parliaments, and drafts on the French treasury, to slip the bridle from their necks. In fact, until the expulsion of the Stuarts, our Kings enjoyed a

revenue independent of Parliament, which enabled them to keep their Commons out of sight in ordinary times. The parliamentary check was made perfect at the Revolution; but the influence of the Crown in the body which ought to exercise it, has continually deadened its effect. The voice of the people, however, has sometimes enforced the constitutional interference of the House of Commons. The most remarkable instance, perhaps, of the use of this right took place at the end of the American war. The House of Commons declared by a resolution, that the farther prosecution of offensive war on the continent of North America, tended to weaken this country, and to prevent a reconciliation with America. An address, in conformity to this vote, having been carried to the throne; and the King having returned a gracious answer, complying with the address, the House of Commons voted, that they should consider as enemies of his Majesty and this country all those who should advise the farther prosecu-

tion of the war in North America, for the purpose of reducing the revolted colonies to obedience by force. In this, as in a few other instances, although the word *supplies* is not mentioned, it must always be understood ; and there is, in fact, a tacit menace of refusing supplies in every interference of the House of Commons with the exercise of the prerogative.

This power, it is quite clear, would enable the House of Commons, if so disposed, to declare themselves the sovereigns, and to take away every efficient prerogative from the Crown ; but such is the moderation of the English people, that they have never desired so formidable an increase of the power of their representatives. At the Revolution, when the whole question was open, they did not bate a jot of the powers necessary to maintain the monarchy ; and, I am convinced, the true reason that the King and the House of Lords maintain their prerogative and privileges unimpaired at the present day, lies more in the temper of the nation, than, as some would

teach us, in the present composition of the House of Commons. The country has a deep-rooted affection for kingly government, and would highly resent any attempt to change or destroy this key-stone of the constitution : nor, as far as I can observe, is this sentiment confined to particular orders of men ; it pervades the whole country from one end to the other. There appears to me, I must confess, as great an attachment to monarchy in the people of Yorkshire, as in the proprietor of Old Sarum ; and fully as much loyalty in the farmers of Norfolk, as in the corporation of Devizes.

## CHAP. XXIV.

CRIMINAL LAW.

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The discretion of a judge is the law of tyrants: it is always unknown: it is different in different men: it is casual, and depends upon constitution, temper, passion. In the best, it is oftentimes caprice: in the worst it is every vice, folly, and passion to which human nature is liable.

LORD CAMDEN.

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THERE are some advantages in the absolute monarchies of Europe over the free government of England on the subject of criminal law. On the one hand, it must be confessed, the free government will be sooner impelled by the progress of enlightened opinions to abolish torture and cruel modes of punishment; and will be forced to relinquish, as contrary to its freedom, all iniquitous proceedings against state-criminals, and all bloody penalties on religious dissent.

But, on the other hand, it must be said that the legislators of a free state are so much engrossed by the heating race of political discussion, that criminal law meets with little attention; and that the Parliament of England, when they do make laws on the subject, are far from being as impartial as an absolute sovereign; for they are continually the objects of the burglaries and larcenies against which they direct their thunder. The monarch, little affected by shop-stealing, and petty pilfering, does not legislate till he has received general complaints, and then does it with calmness and impartiality. But a merchant, or squire, goes into the House of Commons, exasperated by the loss of his broad-cloth, or the robbery of his fish, and immediately endeavours to restrain the crime, by severe penalties. Hence it is, that every man judging that to be the most deadly offence by which he is himself a sufferer, the Parliament has permitted the statute-book to be loaded with the penalty of death for upwards of two hundred offences. Among

the crimes, so punishable, we find the offences of cutting down a tree ; being found with the face blackened upon the high road ; being in company with the persons called gipseys. These continued to be capital crimes till the year 1820, and one, if not two of them, still longer.

These extreme cases are not, however, the most mischievous. The absurdity of the law is an antidote to its cruelty. There are other offences, but very lately and some still punishable with death, which are really in themselves very serious crimes, but not of so atrocious a character as to reconcile any humane man to their being visited with so heavy a retribution. Of this kind were many offences against the bankrupt laws ; privately stealing from the person ; stealing from a dwelling-house to the amount of 40s. ; privately stealing from a shop to the amount of 5s. and many others. The mischiefs produced by these severe laws are not, however, as might have been expected, a very great ex-

cess of severe punishment, and general insensibility in the people.

The evils peculiarly felt are two : First, as it is justly stated by Mr. Justice Blackstone, there is a general disposition not to convict of a crime to which an inordinate punishment is affixed. Cases are innumerable in which juries have found goods of great value, and even 10*l.* and 20*l.* notes, to be under forty, or five shillings value, in order not to convict a thief of a capital offence. \*

Mr. Harmer, who has been solicitor for two thousand persons condemned to death, informed the Criminal Law Committee that an old offender always preferred being tried for a capital offence, as it gave him a better chance of an acquittal. It is singular that something of the same kind happened at Athens. A criminal when convicted, was asked before the people how he would be punished, and an old offender always named the most severe

\* See the excellent speech of Mr. Buxton, on the forgery bill, 1821.

punishment, to excite compassion in his judges. It was partly because Socrates, instead of following this custom, replied that his sentence ought to be, to be kept all his life at the expence of the state, that he was condemned to death.

Notwithstanding this well-known disposition of human nature, so accustomed are we to rely on the efficacy of severe punishments, that in any discussion on repealing a criminal law, the question in many men's minds always is, not whether the offence is actually prevented by that law, but whether the offence is sufficiently grave to deserve that it should be prevented by so severe a method. The members of both Houses of Parliament still consult their own sense of this matter instead of looking to that of jurymen.

Secondly. Another great evil is the uncertainty of the law. Two men, for instance, are tried at Launceston for sheep-stealing; both are found guilty, one is condemned to death, and the other to be transported for

seven years to Botany Bay. It is evident there is no proportion in the punishments. What is the reason? The one has a good character, the other a bad one. So that in England a man is hanged, not for the crime of which he is found guilty, but for the general course of his life. Now this is a matter far above any earthly tribunal. Such a system leads to injustice, cruelty, and confusion. It takes away the only motive for capital punishment, viz. the benefit of example. It does little or nothing towards the repression of the crime punished. It makes the punishment of death useless, and therefore cruel; for every criminal will hope that his character will not be found so bad as to make him forfeit his life. It puts a man upon his trial for actions which the law does not profess to try, and upon which he cannot be prepared with a defence. Thus it happened a few years ago, that a man of notoriously bad character, after going through a course of larceny and burglary with impunity, was at last, to the great surprise of his neigh-

hours, his jury, and his prosecutor, hanged for cutting down young trees. \*

There is at present greater reason than has ever yet been given, to hope for a reform in the criminal law. Many persons however have thought it extremely dangerous to admit that our present law was in such a state as to require reform. Absolute sovereigns have not been affected by this danger. The King of Prussia (Frederick the Great), during part of his long reign, placed his whole system of law under discussion, and during a remaining portion a project of new laws was under the eye of the public for general criticism and consideration: the King thus taking away from the authority of the old law without substituting any thing in its place. Many of the sovereigns of Europe have altered their whole criminal jurisprudence. Even the Pope has within the last few years promulgated a new code on this subject. Why is it, that all these

\* See the evidence respecting this case given before the Criminal Law Committee.

governments have undertaken the task without fear or hesitation, and that a party in England is so fearful of any innovation whatever in our old system? The reason I believe to be this, — that a very large portion of the higher ranks in England, never have understood, and never will understand, the real security of the English government. These persons seeing authority continually attacked, imagine that the throne will be subverted, if any part of its hangings are removed. They are not aware that the real foundation of royalty and aristocracy in England is the opinion the people have of their utility to the whole, and that the retaining any absurd or bigoted or cruel institution, instead of preserving, undermines and destroys the respect due to the assemblies which have the charge of improving and amending, as well as of strengthening and preserving the volume of our laws.

With respect to the criminal law, my own notions of reform would go a great way.

There cannot be many offences to which capital punishment ought to be attached.

All wilful acts tending directly to inflict death ought to be punished with death. Murder, stabbing, shooting at, burning of dwelling-houses, or buildings contiguous to dwelling-houses, and setting fire to the clothes of a person, are crimes of this description. Highway robbery, and burglary, without any of these circumstances, when it is clear that property and not life has been attacked, might more properly be punished by long confinement, than by executions. All other crimes are properly the object of what are called secondary punishments, *i. e.* punishments not capital.

The question of secondary punishments is the most difficult of any. The words of Mr. Harmer afford perhaps the best rule shortly expressed on this subject. "If I were asked," said this gentleman, in an examination before a committee of the House of Commons, "what description of punishments would, in my

opinion, be productive of benefit, I would answer, Such as might force the delinquent into a course of discipline wholly opposite to his habits. Idleness is assuredly a part of his character, which industry would counteract. Set him to labour. He is probably debauched, and abstinence would be advantageous to both his mind and his body : apply it. He has been accustomed to dissolute companions, separation from whom would essentially ameliorate him : keep him in solitude. He has hitherto rioted in uncontrolled liberty of action. I propose that he should be subjected to restraint, and the observance of a proper decorum." — The only remark I would make upon these suggestions is, that if the delinquent were subjected to vigilant inspection, it would not be necessary to keep him in solitude.\*

\* Since the first edition of this book, the success which has attended the introduction of the tread-mill, and the labours of the society for the improvement of prison discipline, have demonstrated most fully, the policy, as well as the humanity, of substituting imprisonment with hard labour for capital punishment.

## CHAP. XXV.

PUBLIC SCHOOLS.

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As it is in the body, so it is in the mind; practice makes it what it is; and most even of those excellencies, which are looked on as natural endowments, will be found, when examined into more narrowly, to be the product of exercise, and to be raised to that pitch only by repeated actions.

LOCKE, *of the Conduct of the Understanding.*

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THE education of youth, which has employed so many pens, produced so many sublime writings, and undergone so little practical alteration, is not to be thoroughly discussed in a few words. Some remarks, suggested rather by observation of the world, than by any original speculation, may, perhaps, be allowed.

Men of enlarged views, and hearts glowing with the love of mankind, have often con-

ceived that youth might be taught more knowledge and less vice than are distributed to them at the public schools of England. With this project in their heads, and the most laudable love of their children in their hearts, many parents have given their children a private education. They have instructed them in ten branches of knowledge instead of two, and have preserved their morals and their health during the first eighteen, or perhaps twenty years of their life. But how often have we seen these promising flowers drop off without being succeeded by fruit in due season? The lessons which are learnt by a boy in the lingering and lifeless manner of a private study, without the excitement of emulation, perhaps without the fear of correction, make no lasting impression on the mind. The restraint of a nursery of twenty years, gives a zest to the pleasures and the follies for an indulgence in which boyhood alone can be any palliation. The period when the talents and strength of the man ought to be unfolded is

wasted in the new pursuits of idleness and debauchery. At the same time, the habits contracted at home, where the young patrician met with no equal, unfit him for the rub of the great world, and fix for ever those defects of temper which early contradiction and early society might have extirpated. Such is often, though not always, the result of an education, intended to produce a prodigy of perfection, and laid out with the hope of giving its unhappy object a pre-eminence over the ill-trained generation of his equals and contemporaries. The mistake in these instances seems to arise from the want of considering, that the object of education is not only to store the mind, but to form the character. It is of little use that a boy has a smattering of mineralogy, and is very fluent at botanical names; it will be of no avail to him to talk of argil and polyandria, if he cries when he loses at marbles, and is lifeless or timid when he is obliged to play a game at cricket. Now a public school does form the character. It brings

a boy from home, where he is a darling, where his folly is wit, and his obstinacy spirit, to a place where he takes rank according to his real powers and talents. If he is sulky, he is neglected ; if he is angry, he gets a box on the ear. His character, in short, is prepared for the buffetings of grown men ; for the fagging of a lawyer, or the fighting of a soldier. Now, this is of much more importance than the acquisition of mere knowledge. Many men only begin to acquire their knowledge between twenty and thirty, few men change their characters after twenty. Considering the question in this view, it is of little importance to enumerate the names of eminent men in England, who have not been brought up at public schools. Many of these rose from middle life, and to them my argument does not apply. The son of a tradesman or a farmer meets hardships enough, without being sent to any school ; he is ordered to serve a customer, or look after the haymakers ; and learns practical life much sooner than any gentleman's

son can possibly do. If the view that has been here opened is a right one, parents ought to beware how they withhold from their sons, if sufficiently stout and able-bodied, the advantages of a public school. The democratic character of the nobility of England, the democracy of the aristocracy, if I may be allowed so to call it, is very much to be attributed to the gregarious education they receive. In this manner, her public schools form a part of the constitution of the country. If they produce some vice, and a good deal of rudeness, they subdue pride, selfishness, and conceit; they create emulation, friendship, and a manly strength of mind. Let any one watch the education of a youth of high expectations in Spain or Italy: he will see him followed every where by a servile flatterer, under the name of a preceptor, learning nothing but the varnish and the falsehood of the world; the idol of his parents, and the torment of their friends. Men of sense, who have undergone this dangerous ordeal, all speak with envy

and admiration of the public schools of England.

Let it be granted, however, that more may be taught by private tuition. I am far from agreeing that, for this reason, the boy of the private tutor will have any advantage over the boy of the public school. His knowledge will be out of place ; his exertions of mind will fail of their effect, because they will not fit in with the minds of other men. His superiority in some branches of learning will be unheeded, and his inferiority in others, will make him ridiculous. Upon the whole, there is perhaps no point from which a man can start, in any profession or pursuit, so advantageous as a complete and thorough knowledge (without prizes or medals) of what is known by other young men, among whom he wishes to excel.

It being conceded that a boy of high expectations ought to be brought up at school, I am not disposed to contend that the education of our public schools is exactly what is

right, or that it is all that is right. These schools were instituted at a time when all knowledge was contained in the Greek and Latin classics, and no sound opinion or polished taste was to be found out of the learned languages. From this groundwork, however, the moderns have raised a prodigious edifice, both of science and of literature, of the whole of which our school education, from eight to eighteen, takes no notice whatever. Not that I would cram the mind of a boy with the whipt cream of botany and mineralogy.\* The first thing to learn is how to learn: "*Il faut apprendre à apprendre;*" and for this it is requisite that the first thing taught should be difficult to learn, and necessarily retained when it is learnt. I know nothing so good for this purpose

\* See Dr. Johnson's opinion of the superior importance of moral to physical knowledge in his Life of Milton. It must be said, however, in abatement of his doctrine, that if a man of the world is ever to learn mathematics, or chemistry, he must learn them before he leaves college; Plutarch and Hume, he will read for his amusement; Euclid and Newton, only by compulsion; human life is a book open before him, the mysteries of nature are to be known only by interrogation.

as the Latin grammar. Boys, it is said, do not understand it. They do understand, however, that a nominative case goes before the verb; and they come in a short time to learn where each part of speech must be placed, and how it depends upon another. If Mr. Locke is right in his estimate of the importance of words, this is a point of great consequence. And who can doubt that he is right? It is to a dogged application to the Latin grammar perhaps that the precision of men, when compared to women, in this country, is partly to be attributed.

The Latin grammar learnt, easy prose, then the poetry of Virgil, some arithmetic, the Greek grammar, Homer, some geometry, and a little geography, might come in their due order. Above all, I would make the boys translate into Latin an abridgement of the History of England, and of the first and last volumes of Blackstone. Many men go through the House of Commons totally ignorant that a prisoner must be fur-

nished with a list of witnesses in cases of high treason.

French should be learnt early, in order to acquire the pronunciation; and because it is the general language of Europe; Italian and other languages, if at all, very sparingly. It will be sufficient to lay a foundation for learning, at a more mature age, those parts of knowledge that are likely to be sought voluntarily, and may be acquired easily.

I know not whether it would be practicable to introduce improvements of the kind I have mentioned into our great public schools. If the masters should resist it, it seems to me that an excellent opportunity for making a good school is afforded by the military College at Sandhurst. It is very right that a certain number of the sons of men who have died for their country should be brought up at the expence of the state; but it is a very wrong thing to bring up a set of young men for military service, totally separate from

all other classes of the community. "In a land of liberty," says Blackstone, "it is extremely dangerous to make a distinct order of the profession of arms. The laws, therefore, and constitution of these kingdoms know no such state as that of a perpetual standing soldier, bred up to no other profession than that of war."

What could be easier than to make a foundation for a certain number, with the qualifications of being the sons of poor officers, or officers' widows, who might afterwards choose their profession; and to institute at the same place a school where education might be conducted in a manner suitable to the knowledge of the present age?

As it is at present, there is no doubt that women of the higher ranks have much more knowledge and information, when their education is finished, than men have. But I cannot see any reason why our young men

should not, while they have the advantages of public schools, at the same time be able to do a sum in the rule-of-three, and make themselves masters of the fact, that James I. was not the son of Queen Elizabeth.

## CHAP. XXVI.

## POOR LAWS.

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Generally it is to be foreseen, that the population of a kingdom, especially if it be not mown down by wars, exceed not the stock of the kingdom, by which it is to be maintained.

BACON.

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THERE is nothing, perhaps, in the whole state of England more threatening to its tranquillity, and the permanence of its constitution, than the present administration of the poor-laws. The perversion which has been made of them from the original meaning of the statute of Elizabeth, has at length fallen most heavily upon those who thought to draw from it a selfish gain.

The statute of the 49th of Elizabeth seems to have had its rise in a general increase of idle poor throughout the country. The notion that

this increase was owing to the dissolution of the monasteries is now given up; it having been clearly shown that the same complaint was made in Spain about the same time.\* It is more probable that the introduction of legal order, and the cessation of internal war not long before, both in England and Spain, threw upon society a great number of vagabonds, who were accustomed to live by vagrancy and plunder. The act of Elizabeth directed that the old and impotent should be provided for, and that the strong and healthy should be set to work. The first of these two directions is the law of a tender and humane people, and will, I hope, ever remain upon the statute-book of England. The second direction is not equally easy of execution. A few casual beggars, indeed, might be provided for in this way; but when, from stoppage of trade, or any other cause, there exists a superabundant population, it is manifest that any work which

\* This important fact was first brought to light in the Edinburgh Review.

could be done by the unemployed, would only be augmenting the stock of a market already overflowing. When this was found to be actually the case, the overseers, instead of furnishing work, supplied the unemployed with money. With the convulsions of commerce, the issue of a fictitious currency, the vast increase of taxes, and, above all, in the years of scarcity during the late war, a new difficulty arose :— men who had large families found themselves unable to support them, although they were themselves employed, from the very low rate of wages compared with that of food. Instead of a rise of wages, the natural and obvious remedy for such an evil, it was agreed that a certain sum of money should be paid for the support of each child at the house of his father. In this provision, introduced under the pressure of temporary distress, the farmer saw a means of reducing the price of labour. Having the market of labourers overstocked, and therefore at his command, he refused to give to the unmarried labourer more than was

sufficient to support life ; he gave the same to the married labourer, and paid out of the poor rates the exact sum necessary for the subsistence of his children. By this scheme the ignorant employer thought he had reduced the price of labour to the lowest possible ; and there have not been wanting men of enlightened minds disposed to exalt it as the perfection of rural economy. The natural consequence of such a scheme, however, was in the first place to lower the character of the labourer : to make him pass his life in dependence, and see himself, instead of being able to rear an industrious family from the savings of his wages, absolutely reduced to the condition of a public mendicant. This consequence, however, would not have given any disquiet to the employer ; but there is another as certain and as necessary ; and that is, that marriages will no longer be regulated by the demand for labour ; and that a labourer, seeing his children will at all events be fed out of the public fund, will marry when it suits

his inclination, without a penny in his pocket. Hence an immense growing population, with a defective and diminishing market; a rapid supply, without any demand whatever. And there is no reason why the evil should not continue to increase until, at length, the whole profits of cultivating the land are swallowed up by the expence of maintaining a colony of useless mouths. If that should happen, the farmer and the labourers must fall together; and there will be thrown upon society a number of people ignorant of all duties, deprived of all sense of independence, and accustomed to derive their means of subsistence without labour, from the public funds. Such a result, it is manifest, would be more calamitous than any revolution that has yet happened in the world. Happily the farmers have at length felt the evil themselves, and they endeavour, by one way or another, to apply a remedy.

Much, if not every thing, may undoubtedly be done to prevent the mischief of the poor laws, where it has yet made no great progress,

and the farmers are enlightened and liberal. Good wages, and a constant system of industry and improvement will employ the labouring people *as long as things continue in a prosperous and steady course.* Labourers themselves undoubtedly prefer the hard-earned bread of independence, to the stinted and litigious charity of an officer of the poor. It is only a bad system on the part of the rich that can debase the indigent.

The evils of the poor-laws have latterly been so great as to incline the mind to wish for their total repeal. But, upon consideration, I am inclined to think that, great as is the mischief of the present system, the entire abolition of it would be still greater. In a country, subject to such violent transitions from the revolutions of trade and commerce, it would be cruel and inhuman to expose the labouring classes to the ruin that would follow a period of agricultural or manufacturing distress. The poor laws must be pruned, not rooted up ; the knife, and not the axe, must be used.

## CHAP. XXVII.

WAR WITH THE FRENCH REPUBLIC.

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It is imprudent to attack a people who are divided amongst themselves, with a view of conquering them, in consequence of their disunion.

There was such disunion in the Roman republic between the people and the nobility, that the inhabitants of Veii, together with the Etruscans, thought that they could extinguish the Roman name by taking advantage of these dissensions. Having raised an army therefore, and made incursions upon the territory of Rome, the senate sent against them Cneius Manlius and Marcus Fabius, whose army encamping near the enemy, the people of Veii did not cease from attacking, both by arms and by reproaches, the Roman name; and such was their rashness and insolence, that the Romans, who were disunited, became united, and engaging the enemy, defeated and routed them. We see, therefore, how much men deceive themselves, as we have before observed, in the line of conduct they adopt, and how it frequently happens that, in thinking to obtain an object, they lose it. The people of Veii believed, that by attacking the Romans disunited, they should defeat them; and the attack on the contrary, caused the union of the Romans, and their own ruin: for the causes of dissension in republics are generally idleness and peace; the causes of union are fear and

war. • • • • The people of Veii therefore were deceived in their opinion, and were, in short, in one day overcome by the Romans. And so for the future will be deceived whoever, in a similar way, and for a similar cause, shall think to oppress a nation.

MACHIAVEL, *Discourses*.

The people of this country loved their constitution. They had experienced its benefits; they were attached to it from habit. Why then put their love to any unnecessary test? Their love by being tried could not be made greater; nor would the fresh burdens and taxes, which war must occasion, more endear it to their affection. If there was any danger from French principles, to go to war without necessity, was to fight for their propagation. Fox's *Speeches*, Feb. 1. 1795.

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THE war against France, undertaken in 1793, exemplified at its commencement the wise observations which I have quoted from Machiavel. The more apparent the attempts of the allied powers to regulate her internal government, the greater her vigour, the more brilliant her victories, and the more extensive her conquests. At length, tempted by military trophies, and successful treaties, she confided herself to a sovereign who, abusing his genius and his force,

endeavoured to make himself despotic lord of the whole continent of Europe. The Whig ministry of 1806, found it impossible to make peace with him ; and with few exceptions, all parties in England agreed in thinking the continuance of the war just and necessary. At length, drunk with unexampled power and glory, and irritated by a perpetual thirst of action, the Emperor of France carried his great army of conquerors to perish amid the frosts of Russia. The nations roused themselves, raised the cry of independence, and hurled the conqueror from the throne. The republic had triumphed, the monarchy was conquered.

By a singular fortune the end of the war, however different in character from the commencement, was equally destined to prove the sagacity of Fox. The few enthusiastic Jacobins of 1793 were converted, in 1817 and the following years, into hundreds of thousands of malcontents. The pressure of

sixty millions of taxes have indisposed more sound and loyal men to the constitution of their country, than the harangues of Citizen Brissot, and the fraternising decree of November could have done in a hundred years.

## CHAP. XXVIII.

**LIBERTY THE GREAT SOURCE OF THE WEALTH  
OF NATIONS, AND ESPECIALLY OF THAT OF  
ENGLAND.**

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Liberty, the parent of commerce ; the parent of wealth ; the parent of knowledge ; the parent of every virtue !

*Speech of SIR JAMES MACKINTOSH,  
on the Foreign Enlistment Bill.*

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THE object of political economy, it is well known, is the wealth of nations. Quesnay, who is generally styled the inventor of this branch of knowledge, considered agricultural labour as the only source of public wealth : Smith superseded him, and taught that wealth consisted in all material products. He therefore called the labour which raised such products from the earth, or which added a value

to them by industry, productive labour ; while he styled the labour which neither created such products, nor added a value to them, unproductive. The first class included agriculturists and manufacturers ; the second, kings, judges, clergy, soldiers, actors, &c. M. Say has since amended this definition, and has proposed to include under the head of productive labour all labour which is useful, whether of body or mind. Thus he considers the labour of a professor of civil law as valuable as that of a weaver of stockings. M. Say, however, though he makes this distinction, very soon loses sight of it, and in the rest of his work, we find little traces of the opinion. The opinion of Mr. Smith still remains the corner-stone of his own system, and of that of his disciples.

Yet if we consider a little, we shall soon perceive how vain is the distinction that he has made between productive and unproductive labour. The soldier who defends a house from robbers, adds a value to it as truly as the painter who adorns it. The editor of a news-

paper gives a value to a sheet of paper by his thought far superior to that which the journeyman-printer gives by his manual labour. The judge who places property in security by his decisions, gives a value to that property, for which the work of a hundred labourers is not equal. On the other side, a French husbandman who raises Bourdeaux wine to be sent to England, is called by Smith a productive labourer; but a French dancer, who is paid a large salary at our opera, is styled unproductive; what is the difference? The product of the one is consumed at the table as a luxury of the palate, while the skill of the other affords an hour afterwards a gratification or luxury to the eyes. Claret is as much a superfluity as a *gavotte*. The dancer may accumulate, and probably does accumulate, more capital than the husbandman. The distinction likewise is not only unfounded, but in many cases impossible to be preserved. The material product is often so perishable, that the term of Smith, who says the labour of the manufacturer

"restores itself in some vendible commodity, which lasts for some time at least after that labour is past," is inapplicable. What is the price of milk of a week old? what would be given for a muffin of yesterday? It is obvious, that many articles last no longer than a barrister's speech at *nisi prius*, or a dance upon the tight-rope at Astley's. Why should we call the scene-painter, who paints a scene for Mr. Kean's Richard, a productive labourer, and Mr. Kean himself, an unproductive labourer? It is clear, that the value of the scene depends on the actors, and that if all plays were at an end, the scenes would be worth nothing.

If we do not adopt the definition of Smith, I do not see why we should be satisfied with that of Say. It is difficult to tell what is meant by labour which is useful, or to distinguish articles of use from those of pleasure. What is the luxury of one age is the want of the next. The Danes, when they first invaded this island, were considered great coxcombs for

combing their heads ; Queen Elizabeth astonished her court by wearing a pair of silk stockings ; yet, no gentleman can now go out to dinner in London or Edinburgh without having used a comb, and put on a pair of silk stockings. We should fall into great errors likewise, if we supposed that what is called useful labour alone contributed to the wealth of nations. A nation composed entirely of farmers and clothiers, would soon produce as much corn and cloth as the whole nation could consume ; but there industry would end. It is the multiplied enjoyment of a highly civilized people that provokes the industry, and thereby augments the wealth of the community. A shopkeeper at Madrid, if he earns sufficient profits to pay for his sorry meal of *olla*, and wear his large rusty cloak, wants nothing more, and makes no farther exertion. A pin-maker of London is never satisfied till “ two puddings smoke upon his board ;” when he has reached that luxury, he extends his views to a house at Clapham, which he furnishes

handsomely, and makes a present to his daughters of new books and piano-fortes : proceeding on, he still augments his wealth, till he can buy a large estate in a distant county, where his enjoyment mainly consists in giving a large ball to the county, and exhibiting finer grapes at his *dessert* than any of his neighbours. Now, would the pinmaker have earned so much, had he been condemned to go on making the most of his money in Birch-in-lane ? No : it is the luxury of a refined society that makes him imagine he wants a villa, and literature, and picturesque views, and splendid balls, and great dinners, in order to be happy. Whether he succeeds or not in his object, the community gains wealth by his pursuit. Nor does it at all matter to enquire why particular articles have a certain value. The piece of carbon, called the Regent's diamond, was bought for half a million ; Pope's translation of the Iliad was sold for 3000*l.* Surely it would be absurd to say that the former article was more useful than the latter ; or that the labourer who

found the one was more productive than the writer who drew the other from his own brain. Those persons, therefore, who write novels, or plays, or act, or sing, are as productive labourers as any of the community. There is a price given for their labour, which can always command other labour; they administer to wants of another sort, but wants as inseparable from civilized man as the luxuries of French wine, tea, coffee, and tobacco. There are classes, indeed, that may be termed useless; but it is because they are not required by the religion, the defence, the dignity, or the happiness of society; such are monks, sinecure placemen, sharers, and vagrants.

These observations lead us to the conclusion that labour is the only wealth; that its value can be measured only by what it will exchange for; and that, in order to be productive, it is sufficient that it should be excited to action. Smith seems himself to have hit upon the truth in a parenthesis; after saying, that the labour of the manufacturer fixes itself in some particular subject, he says, "That subject, or,

*what is the same thing, the price of that subject,* can afterwards, if necessary, put into motion a quantity of labour equal to that which had originally produced it." Now, what is true of "the price of that subject" is true of the price of the labour of the physician, or the Indian jugglers.

Having finished this, I fear somewhat tedious discussion, we may now define wealth to consist in the possession of external things, which are objects of desire and subjects of exchange. Capital, the effect and the cause of wealth, is accumulated labour. These definitions include every thing useful and agreeable that can be brought to market. If, therefore, I were engaged in an enquiry concerning the wealth of nations, I should define all labour to be productive which had either an exchangeable value, or which conferred an exchangeable value on other things. Thus, the king who puts in execution wise plans for the welfare of his people may be the most productive labourer of the whole community.

In the next place, I should define the object of national economy to be, to excite men to industry, and to remove obstacles that may impede their progress to wealth.

In entering upon the enquiry how this object may best be effected, I should take a view of those states which history or the present time exhibits to our view as peculiarly prosperous, or peculiarly wretched. In the latter, we should perceive a languor, a distaste to labour, an indifference to emulation, narrow parsimony, and a wretched way of living; in the former, we should observe incessant activity, vigorous enterprize, the arts flourishing, learning encouraged, comfort and ease diffused through every class. Proceeding to enquire into the circumstances which produced this difference, we should find liberty to be the great exciting cause of industry in the states whose prosperity has been the most remarkable.

It appears certain, that wherever the spirit of the government itself has not repressed the love of gain, as at Sparta, the industry of free citi-

zens has excelled the efforts of slaves, pampering the luxury of their masters. Let us turn our eyes to the proud merchants of Florence, Venice, and Holland, making their little states the envy and terror of great monarchies. Let us refer, on the other hand, to the people of France, living in wretched dependence on arbitrary taxes, and forced to conceal their food from dread of their government. Let us pause a moment to consider the different situation of England and Spain. By the report of a committee of the Cortes, made last year, it appeared that the utmost amount of taxation which, in their judgment, Spain could bear, was about 6,000,000*l.*; in the same year, England and Scotland cannot have paid less than 60,000,000*l.*, and, including poor rates and county rates, nearer 70,000,000*l.* What is the cause of this prodigious difference of wealth? Is it that the English laws on trade and commerce are so greatly superior in wisdom to those of the Spaniards? This can hardly be alleged to be the case: our own laws on these subjects were, up to the peace of 1814, the products of the mer-

cantile system, the most absurd and irrational of any system of national economy. Is it that Spain entirely neglected the new lights of the age? On the contrary, she endowed a professorship of political economy in the University of Salamanca; a step which was not taken, that I know, by any other great state in Europe. She has had, in the course of the last century, ministers who had the most enlightened views of public wealth; but, despotism blasted all their efforts, and every institution they made, after a few feeble shoots, withered and died beneath its poisonous influence; — the very desire of accumulation was wanting, for all the privileges of civilization, the expanded mind and generous knowledge of freemen, were forbidden by the Inquisition. England, on the other hand, blest with equal laws, and affording scope for the expansion of the best faculties of man, has been rewarded for her liberality by the efforts which industry, genius, and talent will always make when not impeded by the laws of servitude.

There are other countries besides England

that have flourished and grown rich by the innate force of freedom alone. The republic of Lucca was, during the last century, a signal instance. The whole number of people in this state were 118,000 souls. The population, says M. Lalande, was 1863 to a square league, the double of that of France, where there were only 922 persons to a square league. The greater part of the Lucchese territory consisted of mountain ; in the plain, in the neighbourhood of Lucca, the population was 5274 persons to a square league.

The force of the republic consisted in 20,000 militia, only 6,000 of whom, however, were paid and exercised. There were no poor or beggars in the republic ; the land in the plain produced three crops in two years, and the mountains were covered with vines, olives, chesnuts, mulberries, and fruit.

Now, what was the economical legislation of this republic ? M. de Lalande thus explains it :

“ To favour and increase the population and prosperity of the state, the council extends

its cares to all the details of the public good, with the greatest attention : it lends money to the merchants ; in epidemic diseases, it sends physicians, and establishes hospitals in the country ; in times of scarcity, it distributes bread to the people at a moderate price ; *all the ovens belong to the republic* ; the magistrates entrusted with this charge, and who compose l'Uffizio dell' Abondanza, *watch that the bakers are always at work : but there are only three shops where bread is sold for the town and the environs, because the commerce of corn is carried on on account of the republic, and it is necessary that the magistrate who buys corn should be sure of a sale.*"

These circumstances may excite our wonder at the prosperity of the republic, but there are other facts mentioned by M. Lalande, that may diminish it. " Every one," he says, " enjoys the greatest security of person and property ; injustice is rigorously punished ; and the nobles themselves have it not in their power to injure any one."<sup>2</sup>

The land here was divided among small proprietors, and cultivated by the spade. The taxes amounted, in all, to 6000 livres, which was not more than five livres, or 4*s.* 2*d.* a head.\*

The first and main cause of the wealth of nations then is liberty. Passing from this part of the subject, the next great incentive to industry is order. This can only be procured by the union of religion, morality, and law. It is order which assures to every one the tranquil possession of the wealth that he may have acquired; it is the regular authority of the law which confers a value on a house in Middlesex above one in Turkey. Who would lay out his capital in purchasing the fee-simple of the finest estate in the wilds of Tartary?

Connected with order, and the respect paid to property by the law, is good faith on the part of the government. Any man would prefer the security of a banker of Amsterdam to that of the emperor of Morocco; or the word of a London coal-merchant, to the

\* Lalande's *Voyage in Italie*, t. ii. c. 27. See also Addison's *Travels in Italy*.

most solemn bond of the emperor of Austria. These three things, therefore, may be considered as the true springs of national wealth—freedom, order, and public faith.

Next to these great wheels, is a wise disposition of the economical laws of the nation. The whole of the precepts, however, to be given on this subject resolve themselves into one—remove all obstacles to industry. As far as mere wealth is concerned, the fewer restrictions the better. This is the great truth proved by Smith, and his coadjutors in France and England, in opposition to the absurdities of the mercantile system.

Smith, in the true temper of the followers of Bacon, made a careful induction from particulars. Collecting together, from every source, statistical and commercial information, he dissipated the blind errors of former writers, and raised a fabric of his own upon the sure foundations of extensive knowledge and philosophic reasoning. He built his theory upon the experience of mankind, recorded in histories, travels, and political documents. But as it is ex-

tremely difficult to obtain an *experimentum crucis* upon these subjects, much remained for his successors to do, in the way of collecting more facts, and thus correcting some errors into which Smith had necessarily fallen. It is much to be lamented, however, that they have preferred to imitate his powers of reasoning rather than his patience of observation; hence has arisen a new system that mingles metaphysics with statesmanship, that deals for ever in general positions, and, to use a phrase of Mr. Windham's, makes the ideal world overrun the real. Deduction, instead of induction, is become the organum of political economy; and the precepts of Bacon being neglected, the mind is led through a labyrinth of ingenious reasoning, extremely similar to the scholastic refinements of the followers of Aristotle.

It must be owned, that this state of the science contains something infinitely gratifying to the pride of knowledge. It would be undoubtedly a great advantage, if all problems of state, of a certain kind, should be ca-

pable of one solution, as triangles of all sizes have an equal number of right angles. It would tend greatly to facilitate politics, if we could fix the happiness of a nation by rule and compasses, as certainly as we measure the height of a mountain by plane trigonometry. It would be the glory of this age, if we could throw aside Cecil, and Somers, and Sully, as ignorant pretenders, and discover a method of governing well, that a student, the most ignorant of mankind, might demonstrate from a diagram.

This, however, I fear, is not the case. With increased knowledge on this, as in every other branch of political knowledge, war, navigation, finance, we must, I fear, continue to use that knowledge only as an instrument, and rely for the proper application to the same nice perception of the turns and tides of human affairs, that distinguished Richelieu or Cromwell ; the same zeal in defending liberty and independence, as the best of all national benefits, that animated Fox, and made Washington immortal.

I have made this last remark, which to some may seem inapplicable, because panegyrists of Smith have not been wanting, who made it a subject of eulogy, that he had found out a rule for making nations prosperous, which all governments might apply, the most despotic as well as the most free. Let us not countenance for a moment so dangerous a notion ; let us beware of yielding assent, even for an instant, to such an error.

Undoubtedly, the writers on the wealth of nations are entitled to the gratitude of mankind ; they seem to me, however, to fall into some mistakes or exaggerations, the causes of which I will here endeavour shortly to point out.

First, An application of general principles to all times and seasons, to the neglect of the remedy required at the particular exigency. A nation is subject to frequent vicissitudes in the course of its progress to prosperity. At particular periods there occurs a glut of manufactures, or of corn, or a sudden distress in

some branch of industry. We naturally look to those whose study is the Wealth of Nations for a remedy ; but they are occupied only with general truths. The transition from one state of employment to another does not seem to occupy their thoughts : they keep their eyes fixed on the end, and do not afford us any defence against the evils to be met with on their way. Whatever your complaint is, they repeat their abstract dogma, and a nation may be ruined before it can hope to have the benefit of their precepts. Adam Smith was, to a great degree, free from this error : in laying down the principle of free trade, he says, there are two cases when it may be advantageous to lay some burden upon foreign, for the encouragement of domestic industry. The first, "when some particular sort of industry is necessary for the defence of the country." The second is, "when some tax is imposed at home upon the produce of domestic industry." He likewise teaches us that "it may sometimes be a matter of deliberation how far, or in what

manner it is proper to restore the free importation of foreign goods, when particular manufactures, by means of high duties, or prohibitions, have been so far extended as to employ a great multitude of hands. Humanity may in this case require that the freedom of trade should be restored only by slow gradations, and with a good deal of reserve and circumspection." \* These are wise restrictions; but they tend so much to limit the action of political economy, that many of its modern professors seem to throw them entirely aside. If any one objects to their sweeping laws, that numbers will be thrown out of employment, they wonder at the ignorance which does not know that if one employment is lost, another and a better will be found. Yet, in spite of this clamour, a temperate man will consider, that the process of converting silk-weavers into blacksmiths, or farmers into cotton-spinners, is one of pain and suffering.

The life of Turgot by Condorcet affords

\* Wealth of Nations, b. iv. c. 2.

some light into the conduct of a minister of this class. Turgot was the only economist-minister that ever governed a great country. He was thwarted in his plans by the narrow prejudices that prevailed amongst the French nobility. But it is also clear that he mistook the road of government. His favourite doctrine was the free exportation of corn ; a question of little importance, since, when commerce was free, France had exported but a small quantity. Instead, however, of commanding a free exportation, which would have ended the dispute, he put forth two royal edicts, containing very eloquent reasons in favour of the measure, but not doing it. Of course his enemies were too happy to be able to controvert a government-essay, instead of being obliged to obey a law : at the same time, Turgot offended the men of letters who at first had warmly supported him, by refusing them the paltry distinctions their vanity required. Public opinion was put in motion against him, and the king, against his will, was obliged to

yield to his interested court and clergy. “*Il est trop entier,*” said the king. “*Il est trop entier,*” we may say of many a teacher of the new school.

Second, A want of attention to the distinctions and modifications required by the division of the world into many independent nations. Were there no such thing as war, no such thing as commercial disputes, no such thing as a national debt, it might be easy for the ministers of different communities to come to an understanding upon a plan of general freedom, and regulate the world according to the rules of universal liberty. But the existing fact is, that every nation is obliged to guard its independence with the utmost jealousy; to avoid with the greatest care putting itself under the control of any other power; and to check its industry by taxes, which are absolutely necessary for the preservation of its separate existence. Besides this, governments are fettered with the old restraints of the mercantile system, or the en-

couragements which, I will not say wisely, have been given to foster a rising manufacture. A country in this condition (and to no country does the description apply more truly than to our own) is like a gouty patient, who, by rich and luxurious living, by a habit of drinking two bottles of wine a-day, and the free use of stimulating dishes, has made himself an artificial constitution. A visionary philosopher might order him to leave off all stimulants, and recommend a diet of vegetables and water, as agreeable to the dictates of nature: but an experienced London physician would feel alarmed at a plan which, though it might cure, would be very likely to kill his patient, and would probably advise such a mitigated system, as, whilst it should be more wholesome and natural than that hitherto pursued, should yet be adapted to the artificial wants which forty or fifty years of inveterate habits had engendered. Such is the wisdom of a statesman, compared to that of an author: he must consider the actual state of things, even

more than possible perfection, and be still more anxious to adapt his measures to the state of things that he sees, than to give them the faultlessness that he dreams of. Those who proceed without attending to this caution, often remind me of a landscape-gardener, who, being asked by a friend of mine to give him some advice respecting his country-seat, told him he had nothing more to do than to alter the situation of the house, and change the course of the river. It is not only internal but external situation also, that must be consulted in arranging economical laws for a nation. In deciding every question that comes before him, a legislator ought to consider that he has to provide, not for the execution of a project of perpetual peace, but for the welfare and prosperity of his own country. Without going the length of the Venetian proverb, “Pria Veneziani, poi Christiani,” I am disposed to say, “Let us first be Englishmen, and then economists.”

Third, Another common weakness is, an ex-

treme dogmatism upon questions of difficulty and intricacy, subsisting at the same time with a great variety of opinions among writers of the same class. There are only a very few opinions on political economy so fixed, that a celebrated name may not be quoted on either side. Smith wrote (and soundly, it is supposed,) in favour of an accumulation of capital: M. Sismondi thinks it may be carried too far: Mr. Ricardo and Mr. Malthus differ on the most important points of the science. There seemed nothing more certain or more convincing in the whole of Smith's work, than his argument against bounties, yet M. Ganilh, one of the latest writers on the subject, is of a completely opposite opinion. I never was more pleased than with the reasoning of Smith, which tends to show that the labour of slaves is of less value than that of free men: yet M. Say maintains, with great ingenuity and plausibility, the contrary doctrine. Lord Lauderdale, in opposition to every other writer, considers the wealth of individuals as the poverty of the state. Yet we are called

upon to place ourselves entirely under the guidance of these philosophers, and to look upon any temporary deviation from their principles as ignorance and prejudice !

Fourth, One consideration that ought to check the extreme dogmatism of the teachers, and the too ready faith of the scholars, in making practical application of abstract principles, is the bulky volume of the chapter of accidents. A nation is about to alter its currency three per cent.: if nothing intervenes, it may be done with some difficulty, yet safely; but if any untoward events occur, the operation may be nearly fatal. A country loses the monopoly of the sea; every one predicts that her export of manufactures and foreign commerce will be lessened: at this juncture Spain is driven from her colonies: Lord Cochrane, by his singular talent for enterprize, takes Lima, and behold commerce and manufactures flourish more than ever. In cases like these, we should always take into our account the contingencies that may occur, and, like a pru-

dent master of a family, forbear to live up to the full amount of our knowledge, lest unexpected demands should derange our fortune ; or rather, it would be more just to say, we ought to widen our knowledge, and instead of trying to simplify a great political question like an equation in algebra, admit into the problem every minute quantity that may influence the result.

The last observation I shall make is, that although it is absurd to impose restrictions on industry for the express purpose of favouring the production of wealth, yet it may be very wise to do so for the purpose of preserving the sources of wealth. A field within the walls of a garrison-town may give a more valuable crop of flax than of barley, yet, if the town is likely to be besieged in the course of the summer, the governor may wisely order barley to be sown instead of flax. In short, the theory of political economy is the most simple and direct, the practice the most difficult and delicate of any part of political science.

## CHAP. XXIX.

## NATIONAL DEBT.

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The common people do not work for pleasure generally, but from necessity. Cheapness of provisions makes them more idle; less work is then done, it is then more in demand, proportionally, and of course the price rises. Dearness of provisions obliges the manufacturer to work more days and more hours; thus more work is done than equals the usual demand; of course it becomes cheaper, and the manufactures in consequence.

FRANKLIN'S *Political Fragments.*

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THE capital of the national debt, at the accession of George I., and when all the accounts of the great war of the Succession may be supposed to have been settled, amounted to 54,000,000*l.*, the interest to 3,351,000*l.* Sir Robert Walpole instituted a sinking fund, on which great eulogiums were made, and of which great hopes were entertained. In 1739 the capital of the debt was 46,954,000*l.*,

the interest 1,964,000*l.*; so that he diminished the interest about 1,400,000*l.*, and the capital about 7,000,000*l.* The Spanish war, however, which commenced in 1739, increased the capital of the debt by 31,300,000*l.*, and the interest by 1,096,000*l.* The peace which followed diminished the capital by 3,700,000*l.*, and the interest by 664,000*l.* But in 1763, after the seven years' war, the national debt amounted to 146,000,000*l.*

From that time to the breaking out of the American war, the national debt was diminished by 10,739,000*l.*

At the close of the American war the national debt amounted to 257,000,000*l.*

The celebrated sinking fund of Mr. Pitt, established in 1786, reduced the national debt, during the peace, by 4,751,000*l.*, and the interest by 143,000*l.*

On the 5th of January, 1817, after the entire close of the war, the national debt amounted to 848,282,247*l.*

In four years from that time, that is, on the

5th of January, 1821, the debt amounted to 845,100,931*l.*, being a diminution of little more than three million.\* During more than a year of this time a new sinking fund had been in operation, voted by Parliament to amount to 5,000,000*l.* a-year.

Such has been the alternate progress of national debt and sinking fund; the one advancing by giant steps, and the other, although much vaunted, never having, in the course of a century, made half the progress that was made by the national debt in the single year 1815. He must be a sanguine man indeed, who expects the sinking fund to overtake his opponent.

Such being the state of the case, it is more than ever necessary to examine what this debt is, what are its effects on the prosperity of the country, and what is likely to be the ultimate result. This last enquiry is indeed one of great uncertainty. Causes the most unlooked for

\*Account of the total Amount of the National Debt of England and Ireland, presented to the House of Commons, Sess. 1821.

may intervene, and entirely change the direction of political events.

The first operation of the national debt is as follows :— The minister borrows, we will say  $300l.$ , of a merchant who has the money in his coffers. He engages to pay  $15l.$  of interest. For this purpose he lays a tax of  $5l.$  on a landed proprietor, another  $5l.$  on a farmer, and another  $5l.$  on a tradesman, all supposed for the present to have equal incomes, and to pay the tax equally. The first operation of the tax is generally the following. The farmer and tradesman add the tax to the price of their commodity. Thus the tradesman pays a part of the tax of the farmer, and the farmer part of that of the tradesman. A tax, it is evident, still remains upon the shoulders of each. The tradesman and farmer must therefore either work harder, and produce more of their own commodity, or they must be contented with less profits, retrench their expences, and buy less of the commodities of their neighbour. The first takes place in a flourishing condition

of a community ; and the second in a poor, weak, and exhausted state. It is by the continual efforts of men to produce more, and to accumulate, that a country rises to prosperity ; it is by the saving and narrowing of accumulation and expence that a nation falls into decay.

There is another manner in which a tax is paid, that is still worse. It is by diminishing the profits of a particular trade. Thus, if a tax of great amount had been laid on shoe-buckles, the sellers of that article, unable to obtain the payment of the tax, would have been obliged to content themselves with less profit. The trade which is thus unequally taxed is soon abandoned.

We must not lose sight, however, either of the landed proprietor or the stock-holder. The proprietor, it is evident, must pay, besides his own, a part of the tax of the farmer and the tradesman, and he has no means of repaying himself. For this reason the economists supposed that the proprietors of land paid all the taxes. But they may, if they please, re-

trench their consumption, and that too with much more ease than the tradesman ; as a livery-servant is more easily parted with than an artisan.

The stock-holder, in the mean time, if he is a consumer, pays to the tradesman and the farmer part of the tax which is raised for his benefit. But he has greater facilities of avoiding expence than any other branch of the community.

There can be little doubt that, for a certain time, a national debt is beneficial in its effects. It promotes a rapid circulation of money ; it brings new capitalists into the market with more enterprize, and more invention than the old proprietors of land ; it obliges the labourer to work harder, and at the same time produces new demands for labour. But when the national taxes have increased to a certain amount, these effects are nearly reversed. Prices are so prodigiously increased to the consumer, that all prudent men retrench both their consumption and their employment of labour.

The greater proportion of the general income of the country is transferred from the hands of men who have the means of laying it out in agriculture or manufactures, into the hands of great merchants, whose capital overflows the market, and returns again upon the land in the shape of mortgages. There is, at the same time, a great want of money in some quarters, and a great abundance in others. Such are the effects of a large national debt upon individuals. But there is another view in which this debt is an unmixed evil. I mean as it impairs and exhausts the resources of the state. The expences of former wars render it at last difficult for a nation to raise taxes for its defence. So much of the rent of the land-holder is taken from him, that the minister dares not ask for more, as it would be equivalent to the confiscation of the land itself.

Mr. Hume has speculated with great ingenuity on the consequence of the national debt arriving at this pitch. He supposes that one of three methods must be resorted to.

The first is, that the scheme of some projector should be adopted, which could only tend to increase the confusion and dismay, and the nation would thus “die of the doctor.” The next is a national bankruptcy ; a plan that he seems to look upon with some approbation. The third, and last, is, that the nation would persevere in paying the full interest. He speculates on such a determination, and compares it in the following manner with his two former suppositions : “ These two events, supposed above, are calamitous, but not the most calamitous. Thousands are thereby sacrificed to the supply of millions. But we are not without danger that the contrary event may take place, and that millions may be sacrificed for ever to the temporary safety of thousands. Our popular government, perhaps, will render it dangerous for any man to venture on so desperate an expedient as that of a voluntary bankruptcy. And though the House of Lords be altogether composed of proprietors of land, and the House of Com-

mons chiefly; and consequently can neither of them be supposed to have great property in the funds: yet the connection of the members may be so great with the proprietors, as to render them more tenacious of public faith than prudence, policy, or even justice, strictly speaking, requires. . . . The balance of power in Europe, our grand-fathers, our fathers, and we, have all esteemed too unequal to be preserved without our attention and assistance. But our children, weary of the struggle, and fettered with incumbrances, may sit down secure, and see their neighbours oppressed and conquered; till at last they themselves and their creditors lie both at the mercy of the conqueror.” The picture of things at home he draws in the following manner:—“ No expedient remains for preventing or suppressing insurrections but mercenary armies: no expedient at all remains for resisting tyranny: elections are swayed by bribery and corruption alone: and the middle power between King and people being

totally removed, a grievous despotism will prevail. The landholders, despised for their poverty, and hated for their oppressions, will be utterly unable to make any opposition to it.” \*

If we look to foreign nations, we shall see that Venice, after wars of glory, arrived, in the beginning of the last century, at that stage of decay of which Mr. Hume speaks. Her revenue was not sufficient to pay the interest of her debt. She suspended payment, but still was unable to support the expense of her government. It requires, however, more space than we have here, to examine the complicated causes of her downfall.

Holland was also borne down in her latter years by the weight of her debt. It is still enormous in proportion to her wealth and population.

France began the revolution with a debt she could not support. By a summary process in the middle of the war, she virtually abolished

\* Hume’s Essays. *Essay on Public Credit.*

the greater part of it. No country, however, has yet been precisely in the situation of England. Commerce and credit are not confined to a spot, but run through every vein in her body ; and, it is to be feared, a national bankruptcy would give a sudden check to industry, the effects of which would not easily be repaired. Very mistaken notions prevail with respect to the good effects which would follow from applying a sponge to the debt. Of these mistakes, none is more evident nor more mischievous than the notion which many entertain and inculcate, that the labourer who receives 18*s.* a-week, of which ten are consumed by the taxes on beer, candles, &c., would, if all these taxes were taken off, receive the same 18*s.*, and obtain more than twice as much for them. The real price of labour, it must be recollectcd, is regulated by the supply and demand. The money-price of course will vary with the money-price of the provisions, house-rent, clothes, candles, &c. which are required for the maintenance of the labourer.

If the demand for labour remains the same, and by a reduction of taxes the articles which the labourer uses are reduced in price from 18s. to 8s., his wages will fall from 18s. to 8s. But it will be said that the farmer and manufacturer, having more capital to lay out on labour, the reduction of taxes will bring an increased demand. This, indeed, may ultimately be the case ; but it is not likely that such effect would follow a sudden stoppage of the payment of the dividends. So many consumers are spread over this country, who derive their income, either directly or indirectly, from the funds, that the first effect of a national bankruptcy would be a great diminution of demand, and a general depreciation of agricultural and manufactured produce throughout the country.

Since the approach of peace, this country has been visited, at two periods, by severe distress. The first began in 1813, when speculators in foreign corn brought grain, raised, perhaps for 20s., some say for 12s. a quarter, in Poland, to cope, in the English market,

with the English farmer, whose taxes and outgoings made it necessary for him to secure 80s. a quarter. The English farmer, of course, was brought to the brink of ruin ; and, had not the legislature interfered and forbidden all importation till the price rose to 80s. agriculture must have been nearly abandoned in this country. The mischief was not perceived in time by the government, and years of severe distress, which affected manufactures as well as agriculture, ensued.

The second period of distress is, perhaps, chiefly to be attributed to the change which took place in the value of the currency, towards the end of the war. About the year 1807, the taxation of this country was at the highest. From this period, the pressure of the war was supported chiefly by the issue of an excessive quantity of Bank paper, the holders of which could not demand the payment of the note in specie. The paper fell in value, step by step, till the depreciation amounted to about 30 per cent.

During this period of depreciation, the debt of the country was increased by above 300,000,000*l.* The expenditure of 1813 alone caused an addition to our debt of 83,000,000*l.*, and that of 1815 another of 43,000,000*l.* The burden of the interest of these loans was not much felt during the war, as (besides appropriating great part of the sinking fund to pay the interest) the weight of taxes was, in fact, diminished by the alteration of the value of the currency. The vast expenditure of capital which took place at the same time, caused trade and agriculture to flourish. The new money created by the Bank produced new speculators and new customers in every branch of industry, thus raising the price of all produce, and causing an apparent prosperity throughout the country.\* But when, by the operation of various causes, and at length by positive statute, the currency is reduced to its original value, all these agreeable symptoms disappear. The merchant or speculator, not

\* See Hume's Essay on Money.

receiving money from the Bank of England, is unable to purchase the produce of the farm. The farmer, at the same time, is obliged to sell at low prices, to pay the country banker the money which he had borrowed to enable him to improve his land, and meet the increased demand of the war. Corn falls in value far below the price which the change in the value of the currency would indicate. The market is overstocked with labourers, created by the former demand and the injudicious administration of the poor-laws. They become a burden upon society, and form a body of unproductive labourers, many times more numerous than the army and navy of the highest war-establishment. The nation, to use a homely comparison, is like a man reduced by fever from a state of robust health, whose clothes are too large for his weakened and attenuated frame.

After the peace, 18,000,000*l.* of taxes were abolished. This was a diminution of 25 per cent. on the whole taxes, but at the same time

the currency was increased in value 30 per cent., so that no relief was obtained. Not long afterwards, 3,000,000*l.* of new taxes were laid on.\* Besides this, the 300,000,000*l.* raised in depreciated money, is to be paid in good currency ; that is to say, about 70,000,000*l.* more than we borrowed ; or, in other words, we pay more than 3,000,000*l.* a-year for money that we have never had. It is true, certainly, on the other hand, that during the war we paid the old stockholders about 70,000,000*l.* less than was due to them, by paying their annuities in the depreciated money. But this only adds to the injustice and fraud of the whole transaction.

In order to avoid the evils attendant upon a restoration of the currency, Lord Lauderdale

\* In the session of 1821-2, about 3,400,000*l.* of taxes have been taken off, which added to 500,000*l.*, the amount of the agricultural horse-tax, taken off in 1821, makes an actual diminution of about 19,000,000*l.* of taxes since the peace to be set against the change in the value of the currency. Upon the whole, the nation is at present taxed about as much as it was in the year 1812 ; but it may be questioned, whether the income of the country is equal in value to what it was at that time.

recommended, in 1814, that we should coin guineas of the value of 21s. of paper-currency. Had this advice been adopted, we should have avoided the misery that we have since suffered, and that, too, as we see, with a very small breach of the national faith.

Perhaps, indeed, the fundholder would have had reason to bless the day on which such a measure was adopted, for it would have retarded the period which, some time or other, will, in all probability, arrive,—when the payment of the full dividend and the safety of the state shall be found to be incompatible.

Our only consolation for not having adopted this course, is, that the country gives an example of scrupulous faith, and unbending honesty, rare at all times amongst nations, but most so in our own times and among the nations of Europe.

## CHAP. XXX.

**THAT A FREE GOVERNMENT REQUIRES PERPETUAL JEALOUSY, AND FREQUENT RENOVATION.**

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Le gouvernement d'Angleterre est plus sage parce qu'il y a un corps qui l'examine continuellement, et que s'examine continuellement lui-même : et telles sont ses erreurs, qu'elles ne sont jamais longues, et que par l'esprit d'attention qu'elles donnent à la nation, elles sont souvent utiles.

MONTESQUIEU, — *Grandeur et Décadence des Romains*, chap. viii.

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ALL experience of human nature teaches us the fact, that men who possess a superiority, real or imaginary, over their fellow-creatures, will abuse the advantages they enjoy. A man cannot even drive a one-horse chaise without looking down upon those who walk on foot ; much less can a mortal be intrusted with the uncontrolled guidance of an empire, and not be guilty of insolence or oppression towards those who are styled his subjects.

The History we have been reviewing is pregnant with examples of the encroachments of power, and the decline of virtue in those who are appointed to govern. The House of Tudor enlarged their prerogative beyond the boundaries of all former times; the House of Stuart improved upon those bad precedents, and claimed, *de jure*, that despotic authority which the Tudors had exercised *de facto*. When this sin was washed away in the blood of the royal martyr, Cromwell, who had been appointed to command the forces of a free Commonwealth against an ambitious Sovereign, made use of the influence he had obtained to set up his own authority still higher than that of England's hereditary kings. When Charles II. was restored to the throne of his father, by the indulgence of a forgiving nation, he imposed upon her a yoke at once more galling and more degrading than that of any former monarch. William III. passed his life in continual struggles with his subjects to obtain new prerogatives or prevent fresh re-

strictions on the royal power. When, by the accession of the House of Hanover, the Whigs at length became completely triumphant, they also fell off from virtue, and the martyrs and patriots of the seventeenth century were succeeded in the eighteenth by a race of pettifoggers and peculators. Nothing can shew more clearly the necessity of perpetual jealousy than the corruption of the Whig party: adhering to all the great principles of liberty, and forming the only free government of any importance in Europe, power proved to them a Capua, and success induced them to forget the means and neglect the qualities by which they had obtained it.

It is true, that the continual agitation of public questions in England has in it something very alarming to persons at a distance. I remember when the question of the Liberty of the Press was discussed in the Spanish Cortes of 1811, an orator, who spoke against a free press, held out the fate of England as a warning, and asked the assembly if they wished

me, on the contrary, that these discussions arising out of the state of the people, and carried on with the whole nation for an audience, so far from being mischievous, tend to excite that spirit of enquiry and investigation which is necessary to the freedom of the state.

Whether Reform is carried or not, it cannot but be of the utmost service to direct the attention of the people to the conduct of the House of Commons, and to oblige them to become, either by their constitution, or by the fear of shame, the vigilant guardians of the public interests. The discussion of the question of Reform will beneficially serve to prevent that stagnation of the public mind, and that blind confidence in the depositories of power which are fatal to a free state.

One melancholy reflection seems to result from what has been said. Liberty, which requires perpetual agitation, perpetual jealousy, and perpetual change, must be exposed to more hazards, and therefore be less durable in its nature than despotism, which to subsist requires

only to be unaltered. A despotism, indeed, which is founded upon ignorance, and which carefully excludes the external light, may, if not invaded from without, be the most permanent of all governments, for the debasement of the people, which is one of its means of immediate government, is likewise a security against any future change. It would seem, indeed, that freedom, like all the best and finest productions of this world, is one of the most frail and transitory. But let not despotism boast her advantage : half a century of freedom within the circuit of a few miles of rock, brings to perfection more of the greatest qualities of our nature, displays more fully the capacity of man, exhibits more examples of heroism and magnanimity, and emits more of the divine light of poetry and philosophy, than thousands of years, and millions of people collected in the greatest empire of the world can ever accomplish under the eclipse of

## CHAP. XXXI.

CONSTITUTION OF THE HOUSE OF COMMONS.

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It is true that what is settled by custom, though it be not good, at least it is fit. And those things which have gone long together are, as it were, confederate within themselves. Whereas new things piece not so well; but though they help by their utility, yet they trouble by their unconformity. All this is true if time stood still; which contrariwise moveth so round, that a froward retention of custom is as turbulent a thing as an innovation; and they that reverence too much old times are but a scorn to the new. It were good, therefore, that men in their innovations would follow the example of time itself, which, indeed, innovateth greatly, but quietly.

LORD BACON.

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WE have hitherto said scarcely any thing of the constitution of the House of Commons. From the time of Edward I. it has been composed of knights who represented the free-holders or landed property of counties, and of

which the privilege of sending members to Parliament is expressly mentioned, grants that privilege as a matter of favour, and as a reward of services performed by the proprietor of the borough. A little before this, the right of voting at county elections was restrained to 40s. freeholders, on account, it is said, of the tumults and affrays which were likely to occur at those elections : — a proof they were already objects of interest. The kings of the house of Tudor, it will be recollect, although they raised themselves above the people, acted not without, but through the Parliament. The House of Commons began to debate according to present forms under the sovereigns of this family. During the reign of Elizabeth it happened, for the first time, that a member was found guilty of bribing the returning officer. In the reign of James, Agmondesham, after 400 years' discontinuance, was restored to the privilege of sending members : Wendover and Marlow were restored at the same time. **Amongst the arguments in favour of their right,**

we find the following, in an abstract of ~~the case~~ drawn in 21 Jac. 1.\* — “ Thirdly, the use in these ancient times being, that the burgesses, attending in Parliament, were maintained at the charge of the boroughs; when the boroughs grew poor, the boroughs only for that reason neglected to send their burgesses to the Parliament; therefore, now seeing they were contented to undergo that burthen, or to choose such burgesses as should bear their own charges, there was no reason to deny that petition. Lastly, it was urged in behalf of the burgesses, that the liberty of sending burgesses to Parliament is a liberty of that nature and quality, that it cannot be lost by neglect of any borough; for every burgess so sent is a member of the great council of the kingdom, maintained at the charge of the borough; and if such a neglect may be permitted in one borough, so may it be in more, and consequently in all the boroughs in England; and

\* Browne Willis, *Notitia Parliamentaria*, vol. i. p. 120.

then it might follow, that for want of burghesses there would be no Parliament."

In consequence of this decision, there was returned, for Wendover, Mr. John Hampden, "who beareth the charge." In this and the succeeding reign, the following boroughs were restored by Parliament :

Ilchester, - 18 Jac. 1.

Agmondesham, 21 Jac. 1.

Wendover, - Ditto.

Great Marlow, Ditto.

Cockermouth, 16 Car. 1.

Okehampton, Ditto.

Honiton, - Ditto.

Ashburton, - Ditto.

Milbourn Port Ditto.

Malton, - - Ditto.

Northallerton, Ditto.

Seaford, - - Ditto.

Twenty-four were restored by the Sovereign himself. These must have been all willing to bear the charge, for fifty-one boroughs that had sent members have never been restored at all.

From the reign of Henry VIII. to the accession of Charles I., the House of Commons received an addition of 156 members. In Cornwall alone Edward VI. added 12 members, Mary, 4, and Elizabeth, 10.

Cornwall, it appears, was chosen as the best place to fix these members, because the Crown in right of the duchy had great influence there, by means both of mines and lands. These additions clearly show the desire of the Crown to obtain dependants within the House of Commons. Such unhealthy excrescences, however, did not prevent the Petition of Right, or guard the throne from the Roundheads.

At a time when projects were teeming on all subjects, for the amendment of the whole body of the law, of the church, of the state, and even of the calendar, it was not to be expected that the House of Commons should be without its reformer. It was natural to expect that a plan should be recommended for making representation equal and uniform. Accordingly a proposal of this nature came from

the masters of all reforms of that day, — the army. The plan was adopted in its chief principles by Cromwell in the two Parliaments he called after becoming Protector: but neither the temper of the times, nor the genius of the man, permitted the experiment to be made in such a manner as to give it the slightest value. From the first of these two Parliaments Cromwell experienced a decided opposition to his authority; and it was dissolved because it presumed to discuss the question, whether the government should be in a single person. In the second, after various means used to influence the electors, no person was allowed to enter without a certificate from the council of state, and thus 100 members were excluded. Richard Cromwell, either discouraged by these essays, or yielding to the growing partiality for old forms and methods, assembled a Parliament in the ancient manner. Lord Shaftesbury, however, who was the first after the Restoration to violate the independence of Parliament, by insisting that all

returns should be judged of in Chancery, was also the first to renew and keep alive the doctrine of parliamentary reform. In a paper published after his death, he complains not only of the undue length of Parliaments, and the corrupt practices of boroughs, but insists on the great speculative grievance that Cornwall sent more members than Wales. Some of his friends, and especially Mr. Samuel Johnson, chaplain to Lord Russell, endeavoured to move the question at the Revolution, but both the great parties studiously avoided the discussion. From that time to Lord Chatham, the principle of reform, though favoured by some illustrious men, chiefly Tories, seems to have slept in peace: at the same time, however, the grievance greatly increased. Boroughs became more and more venal; and the number of placemen in a house of 556 members is said to have been not less than 200. But the people take little or no interest in the question of reform, or indeed in any question purely constitutional, except when they are suffering

real evils from misgovernment. It should be mentioned, however, that in 1745 a Tory motion for annual Parliaments, intended probably to shake the Hanover succession, was rejected by a majority of only 32.

Lord Chatham, finding from experience how difficult it was to rouse the House of Commons to a due sense of ministerial abuses, proposed, as a measure of expediency, that an hundred members for counties should be added to the representative body. This plan was obviously founded on utility only : in the phrase of its illustrious author, it was a plan “to infuse new life into the constitution.”

The American war having placed the misrule of our statesmen in a still more glaring light, Mr. Pitt, in 1781, in 1782, and in 1785, made motions in the House of Commons itself in favour of different plans of reform ; all, however, professing to amend only a part of the representation, and resting, like those of his father, on the basis of utility and experience. There were, however, other doctrines

afloat. Dr. Jebb, and, after him, Mr. Cartwright, broached the theory of personal representation; which, following out the principles of Mr. Locke, pretended to establish, as a natural and indefeasable right, that every man ought to have a suffrage. Neither this theory, however, nor the plan of Mr. Pitt, which was supported by Horne Tooke, and all the temperate reformers of that day, met with any success. Mr. Pitt became at first cold, and then totally silent on the subject.

The question slept till the French Revolution, which disturbed every thing, woke it anew. A society, consisting of many of the ablest men of that day, drew up the paper called the Petition of the Friends of the People. This was no less than a bill of indictment against the governing assembly of Great Britain. The history and the state of the boroughs is minutely detailed; and an elaborate attempt is made to show that a few individuals have the command of the House of Commons, and of course it follows, of the persons and

purses of every man in Britain. There is one part of this statement, however, which is manifestly irrelevant to the subject. A large number of county members and others are enumerated as elected by the influence of peers or certain wealthy commoners. It is alleged, that not only do 84 persons nominate directly 157 members, but that 70 others, by indirect influence, in counties and large towns, return 150 more ; and thus a pretended proof is given, that a few persons elect a majority of the House of Commons. Now every one who knows England, knows that the free-holders of the same political opinions in a county, whether magistrates or shopkeepers, generally agree to give their votes to the same candidate. The qualities which they seek for in a candidate, it is also known, are, generally, not eloquence, or even abilities, but sense, integrity, and property. Property itself is supposed, in some manner, to be a guarantee of character. It therefore happens, that the person among them who has most land, if he has

other common requisites, is the member; and if that person happens to be a peer, then his brother or his son. Thus it is not the tenants only of a man of property, but his party in conjunction with his tenants, who make him knight of the shire. A complaint, therefore, that the eldest son of a certain peer is always returned member for a county in which he has a large estate, instead of the wisest weaver, or most patriotic spinner in the county, is not a grievance fit to be stated to the House of Commons, although it might make part of an essay on the character of the English people, or, of a general treatise on human nature.

Laying this objection aside, however, the main scope of the petition admits of this answer: — “ You complain of the formation of the House of Commons, such as it has existed from the Revolution to the present time. You prove that the frame of our government during that time has been a corrupt combination for private purposes. Now our fathers and our grandfathers have told us, that during that time

they were very free and very happy. Their testimony is confirmed by the wisest lawyers, the greatest philosophers, the most enthusiastic poets of the times. Your theory goes to overthrow the testimony of Blackstone, Montesquieu, Voltaire, Thomson, Cowper, and a hundred others, who have declared England to be in their time in the enjoyment of complete freedom. Now government is a matter of experience, and not of speculation; we will, therefore, rest contented with things as they are."

Such an objection as this appears to me to be sound. For the complaint is made, not of a single or particular grievance, but of the majority of the governing body of the state, such or nearly such as they had existed for a hundred years of liberty and glory. To explain this farther: if a petition were presented, complaining of the bankrupt laws, it clearly would not be a good objection to say, "Our ancestors have been free and happy with the bankrupt laws, therefore we will not change

them." But if a petition were presented, stating that the division of our government into three powers was a most absurd one ; that it was ridiculous to give one man as much power as 658 representatives of the whole people ; that it was out of all reason to admit into the House of Lords a spendthrift or an idiot, because his father had been a statesman or a favourite ; that the veto of the king was a barbarous invention unworthy of a polished nation ; we should answer, " The theory may be bad, but the practice has been excellent."

Mr. Fox, fully sensible to the weight of this answer, came forward in 1797, and put the question upon totally different grounds. He declared the situation of the country to be so perilous as almost to make him despair of the safety of the state. He argued, that the conduct of the ministers had been such as to bring the commonwealth to utter ruin ; and no expedient remained, but to recur to first principles, and reconstitute the state. Admitting

the evil to have been fully as great as Mr. Fox represented it, his reasoning was far from proving the propriety of the remedy. For that evil certainly did not arise from disregarding the voice of the people in the American and French wars. "Liberty is in danger of becoming unpopular to Englishmen," says Mr. Burke, in the American war. "In short," says Mr. Fox, during the French war, "liberty is not popular. The country is divided (very unequally, I admit,) betwixt the majority, who are subdued by fears or corrupted by hopes; and the minority, who are waiting sulkily for opportunities of violent remedies."\* What a strange remedy, then, to make the legislature more democratic! They would have banished and imprisoned the minority. One remark more may be made here. The authors of the plan proposed in 1797, after having sacrificed the whole present constitution of Par-

\* Letter to one of his friends. Vide article Fox, in the new edition of the *Encyclopædia Britannica*. See, also, Mr. Fox's Speeches at the beginning of the war, which are full of avowals, that he had become unpopular by his opposition to it.

liament to uniformity, break that uniformity by proposing that the country should send more members in proportion to their population than the towns. Had the plan succeeded, such a blot could not fail of being hit. The inhabitants of towns might justly have complained, that they, who were more enlightened than country labourers, were defrauded of their due share. A new plan would have followed, and the government would have been placed in the worst of all hands; viz. the population of large cities. London alone would have sent 50 members, Manchester and Glasgow in proportion.

Such objections as those that I have mentioned, might have been sufficient to deter the House of Commons from adopting a new map of representation. But when we are examining the principles of the English government, it is necessary to endeavour, as far as we are able, to lay down some general rules for the formation of the assembly of the Commons of

a limited monarchy. A few may suffice, both for the author and the reader.

First, All parts of the country, and all classes of the people ought to have a share in elections. If this is not the case the excluded part or class of the nation will become of no importance in the eyes of the rest: its favour will never be courted in the country, and its interests will never be vigilantly guarded in the legislature. Consequently in proportion to the general freedom of the community will be the discontent excited in the deprived class, by the sentence of nullity and inactivity pronounced upon them. Every system of uniform suffrage, except universal, contains this dark blot. And universal suffrage, in pretending to avoid it, gives the whole power to the highest and the lowest, to money and to multitude, and thus disfranchises the middle class, the most disinterested, the most independent, and the most unprejudiced of all. It is not necessary, however, although every class ought to

have an influence in elections, that every member of every class should have a vote. A butcher at Hackney, who gives his vote perhaps once in twelve years at an election for the county of Middlesex, has scarcely any advantage over another butcher at the same place, who has no vote at all. And even if he had, the interest of the state is in these matters the chief thing to be consulted ; and that is as well served by the suffrage of some of each class, as by that of all of each class.

It is an argument too against making the right of suffrage too common, that the privilege of giving a vote gains a value, from not being too generally possessed, or too frequently exercised: were it used every year, by every body, it would be as little regarded as the golden pebbles were by the children of El-Dorado.

Secondly, Enlightened men of every class should be capable of being elected. The highest in rank, excepting the peers, should be admitted, because they give to a popular as-

sembly new importance, and receive from it additional stability. Above all, their presence and concurrence unite the aristocracy and the people in a common sympathy, planing away the pride of the one, and the envy of the other. Persons without rank, or high birth, who have risen by commerce, ought, most undoubtedly, to be capable of admission, both to give an encouragement to the honest exertions of all sorts of men, and to make every class feel intimately persuaded that they are represented in fact as well as in name. These two sorts of persons require only the legal permission to enter the legislature : they are sure to find themselves there. But there is another class who ought to form a part of any good representative body, whose election is not so sure : I mean those who are distinguished by their learning and their talents, but not by their fortune, or their commerce with the world ; men who have devoted their youth to the acquirement of the knowledge of English law, laws of nations, history of the constitution,

political economy ; but who are excluded by their want of pecuniary means, their temper, or their habits, from popular contests. For it is not to be denied that a body of 10,000 farmers or tradesmen will choose no man who is not known to them, either by his station in the country, or by a course of popular harangues. If, then, you make none but elections by large bodies, you either shut out the aristocracy of talent from your assembly, and constitute them into a body hostile to your institutions, or else you oblige them to become demagogues by profession : things both of them very pernicious, and very dangerous to the state. It is useful, therefore, to have some elections by persons who, from their station in society, are acquainted with the characters of the men of talent of the day. This may be done either by forming some elective bodies of a few persons, with a high qualification, or by giving to property a commanding influence in the return of a proportion of members.

Thirdly, The grand principle of all, derived

from the two foregoing, is, that the representative body should be the image of the represented: not that it should represent property only, or multitude only, or farmers, or merchants, or manufacturers only; not that it should govern with the pride of an insulated aristocracy, or be carried to and fro by the breath of transient popularity; but that it should unite somewhat of all these things, and blend these various colours into one agreeable picture. The House of Commons should be, as Mr. Pitt said, an assembly united with the people by the closest sympathies. Nor is it meant by this expression to say, that it should be for ever following the uppermost passion of the people. The decisions of the House of Commons should be such as either to satisfy the people at the moment, or capable of satisfying them upon plain reasons, when the arguments and the facts are laid before them. If the decisions of the representative body are not fit to do this, not only are they a bad House of Commons, but they would form a

bad senate, or a bad privy-council. Let us now see whether the English House of Commons is formed upon principles similar to those I have mentioned :

1st. The general scheme of the representation is evidently calculated to give the right of voting to persons of all classes. Landed property is represented in counties ; commercial in cities ; and the boroughs contain every possible mode of suffrage, the most limited and the most universal. These, too, are all so blended together ; the towns have so much influence in county elections, and landed proprietors so much influence in the neighbouring city or town, that one kind of members does not feel much jealousy of another kind. It is always a great misfortune when they are pitted against each other.

But although no class is excluded from our constituent body, there are parts of the country very inadequately represented. The county of Lancaster, and the county of York,

comprising Manchester, Bolton, Leeds, Sheffield, Halifax, and Huddersfield, and containing 2,500,000 of inhabitants, are represented by four persons. This is evidently a practical grievance, and as such it has been felt.

2d. Enlightened men of every class find their way into the English House of Commons. Those who have property in land are candidates for their respective counties ; those who have made their fortune by commerce or manufactures, may easily establish an interest in cities with which they have some connection, or in towns (there are many such), where, without bribery, the inhabitants require a man of fortune to support their public institutions, and give them his custom in laying out his income. There remains the aristocracy of talent, who arrive at the House of Commons by means of the close boroughs, where they are nominated by peers or commoners who have the property of these boroughs in their hands. In this manner the greater part of our distinguished statesmen have entered Par-

liament ; and some of them perhaps, would never have found admittance by any other way. The use of such members to the House itself, and to the country, is incalculable. Their knowledge and talents give a weight to the deliberations, and inspire a respect for Parliamentary discussion, which in these times it is difficult for any assembly to obtain. The speeches, too, of able and eloquent men produce an effect on the country, which is reflected back again on the Parliament ; and thus the speech of one member for a close borough is often of more benefit to the cause of truth and justice than the votes of twenty silent senators.

Some danger as well as much anxiety, it may be thought, arises from the power of nomination to a seat in a representative body. Theoretically it would be better if the members sent by single persons were elected by a body of rich constituents. But in practice it is not found, that the borough proprietors combine together to sell their influence : on

the contrary, they are firm to their several party-connections, and oftentimes they preserve to the House a great orator, whom the clamour of the day or a fortuitous circumstance has thrown out. Such was, on one occasion, the case with Mr Fox.

3d. Do the Commons of England represent the people? Perfectly well when the people and the government agree; but when they separate, the decisions of the House of Commons lean more to the side of the government than of the people. This may be proved by examining the history of the two last years of the American war. The majorities on these occasions were small, and they consisted chiefly of borough members. The same thing has happened since the last peace of Paris, on divisions relating to the scale of expenditure and patronage which the ministers have kept up. The country has been decidedly one way; and the House of Commons, by small majorities, has determined in the opposite direction. The proof of this is made by

analyzing the divisions, and seeing how the county members have voted. Thus, on Mr. Dunning's motion in 1780, ministers in 215 members had only 11 county members, whilst their opponents in 233 had 69. The desertion of 20 members was then sufficient to turn the scale. On the Walcheren expedition, the English county members against ministers were nearly as three to two, but the majority of the whole House was in favour of the administration. In 1817, on the question of appointing a finance committee with less than five placemen upon it, the county members divided 27 to 15 for the Opposition; the house at large 178 to 136 for ministers. On a motion for reducing two lords of the Admiralty, the county members were 35 to 16; the house 208 to 152 the other way. It thus appears that during two periods of crisis, the county members, who, as we have seen, are men of property, inclined to the crown always from station, and generally by party, have been in minorities upon the popular side. It is

sufficiently clear, therefore, that other parts of the House of Commons are far indeed from representing the people. The boroughs especially are liable to this censure. The boroughs generally give a large majority to ministers; but the smaller boroughs give five and six to one, and the Cornish boroughs 16 or 17 to one in their favour. There is one kind of boroughs which has not hitherto been mentioned, and which is a chief cause of this disorder. It is a species of borough of which the seat is sold by the electors to the highest bidder. Many of those who represent this kind of borough come in with what are called not political but commercial views. These views are to make as much as possible at the treasury, and vote on all questions and at all seasons alike. Many boroughs also have what is called a patron; sometimes an attorney, sometimes a baronet, and sometimes a peer, who sells them in the market, and takes fifty per cent. for his trouble.

These boroughs, it is true, also return men

belonging to the commercial interest, who always ought to find seats in Parliament. But they send them to the House of Commons, not as representatives of the commercial body, but as representatives of that firm in the city to which they belong. Hence contracts, and licenses, and jobs, of every kind and description. Hence an enormous army and overgrown civil establishments have been sanctioned by the House of Commons in spite of a great majority of those members, without distinction of party, who have large bodies of constituents.

We have now arrived at the conclusion, that the House of Commons does not adequately represent the people, and that the small boroughs prevent that vigilant stewardship of the public revenue which is the bounden duty and peculiar function of that assembly. It follows as an immediate consequence, that the small boroughs have betrayed the trust which is reposed in them for the good of the community; and that they

may without injustice be deprived of the valuable privilege they continue to possess. But we then come to another question. It is not certain, because we have a right to do this, that it would be wise to do it, or, indeed, that the remedy may not be worse than the disease. In order to enable us to take a clearer view of this part of the subject, let us first take a view of the most approved specifics of the day.

The first of these is universal suffrage. Some persons maintain, that every man has a right to a personal vote, which he has received from God, and which cannot be separated from him. If this were true, it would put an end to all question immediately. But in fact it is absurd. The right which a man possesses with respect to voting is an artificial right, and must be that which the laws allow him. It would be more rational to say, "Every man has right to a share in the government of his country : let not the people trust their interests any longer to other hands,

but meet and conduct them themselves on Salisbury Plain.” The right is equally good; and Tacitus would have furnished better precedents for this practice than the reigns of our Edwards do for personal suffrage. But further ; — there are two things, and not one only, to be proved : 1st, that there exists such a right; 2d, that it is wise to exercise it. Every member of the House of Commons has a right to freedom of speech ; but, happily, many allow it to be dormant ; and a multitude of hearers submit to an oligarchy of speakers.

The advocate of universal suffrage next maintains, that the right is one acknowledged and exercised in ancient times of our history ; but this is a pure vision. The members for cities and boroughs were chosen by persons who held the elective right by charter or prescription. The knights or members for counties were chosen by the freeholders : *i. e.* persons who were free, and possessed land. Of universal suffrage, therefore, not a vestige is to be found, except in one or two boroughs,

where this right of voting was established by prescription or charter.

Leaving all right aside then, let us consider the expediency of universal suffrage. On this I shall not dwell long. It is manifest, that universal suffrage is calculated to produce and nourish violent opinions and servile dependence; to give in times of quiet a great preponderance to wealth, and in times of disturbance, additional power to ambitious demagogues. It is the grave of all temperate liberty, and the parent of tyranny and licence. This is not a dream, but the recorded result of the experiment in France; and every Frenchman who loves liberty speaks with horror of universal suffrage. In America the same bad effects have not followed from this system; but it has produced a monopoly extremely prejudicial to freedom, by throwing the actual elections into the hands of a very few persons, who have assumed to themselves the power of governing for the whole. Hence the real power of choosing the member resides with

a small number of leaders of one party or the other.

We come next to consider the effects of a plan to divide the country into districts, and extend the right of suffrage to all persons paying direct taxes. If this plan were accompanied by a triennial bill, it would certainly render the House of Commons an assembly very obedient to the popular voice; but there is some danger that many of the advantages of representation would be lost. The very scope and object of representation is to obtain a select body, who may not only have a sympathy with the people, but who may, by the habits of business which their number permits, and the judgment which their election implies, manage the interests of the country somewhat better than each town and county could do by petition and public meeting. If you render the House of Commons a mere echo of the popular cry, you lose on many questions, all the benefit of having a body in some degree capable of directing public opi-

nion. I am aware that this argument may be easily pushed too far. I can only repeat, to explain my meaning, that the House of Commons ought to make such decisions as are either agreeable to the people at the time, or when they are not so, the weight of argument should be so great as to convince the country within a short time afterwards, that the resolution or vote was adopted, not from any corrupt or sinister motive, but from an enlarged and sagacious view of the public interest.

Other arguments might be used to shew that a House of Commons elected by one class only would not so fully represent the people as one chosen by many different classes. But on this topic I have already touched. These are speculations, however, of some uncertainty. In my mind, the greatest objection of all to the adoption of any broad general plan of reform is the danger it would bring with it to every other institution. The real evil of our present government is the enormous amount of the national debt. Were we to make any

complete and total change in any one branch of our legislature, the people would soon enquire whether that change had lightened the burden of the debt. It would be no satisfaction to them to be told that by reductions in the army, and other establishments, savings to the amount of three or four millions had been made. After requiring and obtaining a complete revolution in the form of the House of Commons, the seat of government, they would expect much greater alleviation than any economy could grant. New and more violent changes would be demanded. Law and prescription would be less regarded in every fresh change. The national creditor would in vain urge the justice of his claim to the payment of the interest due to him. I know there are many persons disposed to say, "Why, this is the very thing we want. We only value reform as a prelude to measures too comprehensive, or if you will, too violent, for an old-established government to undertake." Such is the feeling of the most able, but I

think not the most prudent of the reformers. It is a question, however, of feeling rather than of reasoning. For my own part, I cannot understand how a man can have read the histories of Athens, of Sparta, of Venice, of France, of Spain — how he can have looked for an hour into the history of the world, — how he can have thrown a single glance at the governments existing in the world at the end of the eighteenth century, — how he can have weighed the miserable result of the most benevolent plans, and the most brilliant schemes of government, and not cling the closer to his native home. Corrupt as the administration of English affairs may be, it is impossible not to see that the laws afford a greater protection to civil, personal, and political liberty in England, than the general average of governments attain.

“ The blessings of the constitution under which we live,” is not, after all, an unmeaning phrase. They are acknowledged by foreigners, and by the greater portion of the people of this

country. The true coin of our freedom may be clipt and worn, but still it is better than any paper security that may be offered to us. We speak, we write, we think, we act, without fear of a Bastile or an Inquisition. We wear liberty about us still; and the dregs of the spirit of old times, with decayed institutions, are of sounder and better flavour than a new constitution, however admirable, which requires new maxims of conduct, and new feelings of right and justice.

There is still a third principle, or basis, upon which measures of reform may be founded.

We have seen that, towards the end of the American, and after the conclusion of the French war, the decisions of the House of Commons were contrary to the well-known sense of the people. But the majorities were small, and perhaps an instance will hardly be found of a majority of more than one hundred, on a question on which the country itself was not extremely divided. Now, as it is a maxim

of Newton and succeeding philosophers, not to admit more causes than are sufficient to explain the phenomena; so also it ought to be the maxim of a statesman not to propose more innovations than are sufficient to cure the evil.

It would lead us too far, if we were to enter here into the discussion of the means by which this great object could best be accomplished. Besides, I have elsewhere fully explained my opinion on this subject.

I shall only state, in conclusion, that upon the whole, the authority of our greatest statesmen seems to lean to a partial, and not a general reform. Mr. Pitt's first proposition was to add 100 members to counties; he next moved for a committee; and the last time he brought forward the subject, in conjunction with Mr. Wyvill and the great body of reformers, he proposed to buy the franchises of 36 boroughs, and of some close corporations, who should be willing to part with them. But he never proposed to pull down the house in

order to build it up again from top to bottom after a modern plan. Mr. Fox, during the war of the French revolution, went much further. But his sober opinions, as well as those of a person illustrious by his own character, as well as by his friendship for Mr. Fox, may, I think, be collected from the following passages of the speech of Lord Grey, on bringing forward a motion for a committee on the state of the nation, in 1810. In quoting these passages, I know very well, that the statesman to whom they are attributed, has never given any authority for their correctness; they may be taken, however, as the general substance of what he said:— “I have hitherto spoken of financial reform, and the reduction of needless offices: in my judgment, your lordships’ duty does not stop here. You are, my Lords, in a situation where it is incumbent upon us to look into those defects, which, having arisen through time, have injured the frame and corrupted the practice of our constitution, and to apply to the abuse

such remedy as can be effected by a gradual, temperate, and judicious reform, suited to the nature of the evil, the character of the government, and the principles of the constitution. I would not have ventured to make this avowal to your Lordships, without much previous thought, and the most deliberate circumspection. The question of reform has long engaged my most serious contemplation. At an early period of my life, I certainly took up strong opinions upon this subject, and pursued them with all that eager hope and sanguine expectation, so natural to the ardour of youth. I will not say that there may not have arisen some difference between my present sentiments and former impressions; still I beg leave to assure your Lordships, that the general opinions I then formed, I have not, in my maturer age, seen cause to change, and that whatever distinction exists between my early and my present views of reform, on its great grounds that question has not been abandoned by me. That a de-

gree of difference exists between my present and former impressions is what I freely acknowledge ; he, indeed, must have either been prematurely wise, or must have learned little by experience, who, after a lapse of twenty years, can look upon a subject of this nature, in all respects precisely in the same light. But though I am disposed soberly and cautiously to estimate the principles of the constitution, — though, perhaps, I do not see in the same high colouring the extent of the evil sought to be redressed, and am more doubtful as to the strength and certainty of the remedy recommended to be applied ; still, after as serious and dispassionate a consideration as I can give to what I believe the most important question that can employ your Lordships' attention, it is my conscientious opinion that much good would result from the adoption of the salutary principle of reform gradually applied to the correction of those existing abuses, to which the progress of time must have unavoidably given birth ; taking especial care

that the measures of reform to be pursued should be marked out by the constitution itself, and in no case exceed its wholesome limits. With respect to any specific proposition of reform of the other House of Parliament, I know not how to speak of it, fearful lest, even in introducing the topic, I should transgress the bounds of that respect due to an integral branch of the legislature, and most particularly as the propriety of any proposition of this nature must rest upon the acknowledged imperfection of that branch, together with the abuses which have rendered it less strong as a barrier for the people against the encroachments of power. But as nothing can be done on this subject without the concurrence of all the branches of the legislature, and as that which affects one branch concerns us all — as the question itself is of the highest importance to the nation at large, it is, my Lords, of particular consequence even to so humble an individual as myself, that my opinion on this subject should not be misrepresented. I there-

fore am ready to declare my determination to abide by the sentiments I have before expressed; and that I am now, as I was formerly, the advocate of a temperate, gradual, judicious correction of those defects which time has introduced, and of those abuses in the constitution of the other House of Parliament, which give most scandal to the public, at the same time that they furnish designing men with a pretext for inflaming the minds of the multitude, only to mislead them from their true interest. To such a system I am a decided friend; whenever it shall be brought forward, from me it shall receive an anxious and sincere support. But as I never have, so I never will rest my ideas of salutary reform on the grounds of theoretic perfection. While I shall ever be ready to correct, by the fixed principles of the constitution, an admitted inconvenience where that inconvenience is practically felt, I continue to disapprove of all those general and vague speculations in which some men would wish to engage."

After some remarks on privilege of Parliament, he proceeds :— “ If, my Lords, any consideration more than another could confirm me in the validity of this doctrine, it would be the concurrent opinion of that great statesman, by whom it is the pride of my life to have been instructed and informed in the early part of my political career ; I mean Mr. Fox, whose views respecting reform I had frequent opportunities of ascertaining, in the course of many debates ; and than whom there never existed one who more fully understood the principles, or more affectionately appreciated the blessings of the venerable constitution under which he lived. If, in his political creed, there was one article which he held more stedfastly than another, it was, that while a system was practically good he would always abstain from mending it by theories. And never, my Lords, can I forget his powerful observations, when in his place in Parliament, he stated his conviction of the absolute impossibility of providing for all the variety of human events, by any previous specu-

lative plans: For, said he, I think, that if a number of the wisest, ablest, and most virtuous men that ever adorned and improved human life, were collected together, and seated round a table to devise, *a priori*, a constitution for a state, it is my persuasion, that notwithstanding all their ability and virtue, they would not succeed in adapting a system to the purposes required, but must necessarily leave it to be fitted by great alterations in the practice, and many deviations from the original design. And this opinion he was wont to illustrate by the familiar but apt example of building a house, which, notwithstanding all the study and consideration previously bestowed upon the plan, was never yet known to supply every want or to provide all the accommodations which, in the subsequent occupation of it, were found to be necessary. Nay he used to remark, that, however fine to look at, a regular paper plan might be, no house was so commodious and so habitable as one which was built from time to time, piece-meal, and without any regular design. To

those principles of practical reform, so wisely enforced by that great statesman, I am determined to adhere; and the acquiescence of your Lordships it is my duty also to solicit; again repeating that the remedy I seek, shall be limited by the existing defects, shall be marked by the constitution itself, and not launch out into any extravagance of theory, which even appearances may recommend."

**CHAP. XXXII.****STANDING ARMY.**

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Nothing ought to be more guarded against in a free state than making the military power, when such a one is necessary to be kept on foot, a body too distinct from the people.

BLACKSTONE, b. 1. c. 15.

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IN every free state, a Standing Army has been an object of attention and suspicion, and various methods have been resorted to, to prevent the dangers which might be expected to liberty from so formidable an instrument of power. In a view of the constitution of England, the subject of the standing army certainly ought not to be omitted.

In ancient times, the king had a right to call for the attendance of his military subjects in any war in which the kingdom might be engaged, but the term of service was never more

than a summer, and the feudal troops ranged under the banners of their lords, retained their special allegiance, and added nothing to the civil authority of the king. Henry VII. is said to have been the first of our sovereigns who maintained a body guard for his own person. Henry VIII., and after him Queen Elizabeth, began the practice of sending lord lieutenants into the counties with authority to command and array a part of the population for the defence of the county.

From this institution arose the well-known pretension of Charles I. to the command of the militia; a pretension which, however countenanced by the practice of his immediate predecessors, had no authority in law. At the accession of Charles II. however, the question was decided by Parliament in favour of the crown, and a statute was passed, enacting that the command of the militia, as well as of all other forces raised, or to be raised in the kingdom, should reside in the king. Charles was extremely jealous of

this part of his prerogative, and on one occasion, when a militia bill was passed by the House of Commons, he said, he would not let the militia out of his hands, no, not for one hour. He made use of the power granted him by Parliament to raise a standing army; varying in numbers, according to the circumstances of peace or war, and supported in times of peace by the subsidies of Louis XIV. He is said to be the first king of England who ever went to open his Parliament under the protection of the sword. James II. increased the standing army to 30,000 men, and endeavoured to make them the instruments of his designs by a strong infusion of Roman Catholic officers; but the English soldiers disappointed his expectations, and by their shouts at the acquittal of the bishops, convinced the tyrant that his trouble had been thrown away. At the Revolution, it was provided by law that no standing army should be maintained in these kingdoms, unless by authority of Parliament.

Since that time, an act has passed every year, enabling the king to punish mutiny, desertion, and other military offences; the number of men to be maintained during the year being always inserted in the body of the act. Thus we are secured at least against the renewal of an attempt similar to that made by Charles and James to keep up a military force, in defiance of the authority of Parliament, and by means proceeding from other sources. There is not much gained however by this provision; the cost of maintaining an army is so great, that it could scarcely be defrayed otherwise than by Parliamentary funds.

During the reign of William, extreme jealousy was shewn by the House of Commons of a standing army. After the peace of Rhyswick, they obliged the king to dismiss his Dutch guards, though William sent down a message to the House of Commons, written with his own hand, imploring in very intelligible terms that he might be allowed to retain his favourite veterans. But the Commons

were inexorable. At the same time, they voted that the whole standing army should be disbanded ; though, upon consideration of the necessity of guards and garrisons, they in the following year agreed to vote 7,000 men for the defence of England, and 12,000 for Ireland. Let it be remarked, that, at this time, Louis XIV. was on the throne of France, supporting the title of the exiled king of England, and reviewing in his camp at Compiegne an army of 80,000 men, part of 450,000 whom he maintained during war. Some among us will perhaps be surprised at the boldness of the English House of Commons, both in thwarting their own, and in defying a foreign sovereign ; yet we shall not perceive that they had any reason to repent of their rashness ; for, during the succeeding war, the conqueror of Blenheim and Ramilles renewed for England the military glories of Crecy and Agincourt.

At the accession of the House of Hanover, the standing army appears to have been greatly increased. Fifteen, sixteen, and seventeen

thousand men were usually voted by the Parliament of England, and a separate establishment maintained in Ireland. This number seems to have been the average of the greater part of the last century. In our own days, the number has been still farther increased: an augmentation on which I shall say a few words presently.

A standing army being thus, as it were, engrafted upon the constitution of England, it remains to be seen what are its effects upon the government, and whether any real danger is to be apprehended from it. From the Revolution to the present day, there have never been wanting a certain number of persons, whether moved by patriotism or by faction, who have warned the country of the evils to be apprehended from a military establishment, and pointed out the subversion of the freedom of Rome and other popular states by a standing army, as an example for us to avoid. I am inclined to doubt, however, whether the parallel be a just one. Republicks have been destroyed

by standing armies, because armies have assisted their chiefs in establishing a perpetual dictatorship, and in overthrowing the senates and the laws in behalf of a military despotism: but in England, neither experience, nor the present state of the country, can excite any reasonable dread of the usurpation of a successful general. The monarchical form of our government seems, whatever else of good or of evil it may have, to be a preventive of this evil. Neither is it much to be apprehended that the king himself will make use of the standing army to cashier the Parliament, and subvert the constitution by force. Opinion is too much settled, and the institutions of the country are too vigorous as yet to admit of so desperate a project: the army itself likewise is too deeply connected with the other classes of the country, to concur in a scheme for putting down the established authorities of the realm. It is true, indeed, that the virtue of the army is as Lord Chatham said, our chief protection against this danger;

but seeing the formation of the army, it is sufficient.

The open subversion of our constitution by the force of the standing army is then a danger not impossible certainly, but extremely improbable in the present state of the country. Yet we are not to conclude that because there is little danger of the army destroying our freedom like the troops of Marius or Cæsar, or of its becoming the servile instrument of a king in a design of making himself absolute, that therefore a large standing army may not be a reasonable object of alarm to all lovers of the constitution. When the peace establishment of 1816 was proposed, Lord Grenville spoke of it in the following strong terms : — “ For my own part, I pledge myself to your lordships, and to the country, that never, either in this House or elsewhere, will I fail to give the most strenuous opposition in the power of so humble an individual as myself, to any attempts to entail such a monstrous burden on the nation, and to lay the

foundation of *such ruin to the constitution*, as must follow, from the maintenance in time of peace, of an immense military establishment. I could not help last year expressing my dread, that some such proposition was likely to be brought forward. My apprehensions were then considered as visionary; but I fairly confess, that the utmost stretch of my imagination never came nearly to the amount of expenditure which was spoken of out of doors as likely to be proposed. I never did, for a moment, conceive, and I can hardly yet believe, that it is intended to keep up in time of peace, and in this year of peace, an army of 150,000 men. And if any thing could add to the astonishment and horror which I felt, when I heard of such a proposition, it was this: that an army of 50,000 men was to be kept up in the United Kingdom. When that shall be proposed, I trust, that time and opportunity will be afforded to discuss the proposition. I trust, that it is not in the course of one night, or of one debate, that your lordships are to

be persuaded so far to abandon the maxims and policy of your ancestors, as to cast away the hope of the blessings of peace and freedom. For my own part, feeling as I do every year still less and less desire to share in the debates and labours of that House ; yet, if such a measure as this were really to be brought forward, there is no exertion of which I am capable, that should be spared to prevent so great a misfortune. And should such a measure be acceded to, if any reflection could then soothe the declining years of my life, it would be this ; that no poor effort which could be made by so humble an individual as myself had been wanting, to avert from my country such a calamity.”\* The military establishment, of which Lord Grenville here speaks, had been already proposed by ministers in the House of Commons : it consisted of 25,000 men for England, 25,000 for Ireland, 46,000 for the colonies, 3,000 for reliefs, 30,000 for France, and upwards of 20,000 for India. Lord

\* Parliamentary Debates, vol. 32. p. 515.

Grenville strictly kept his pledge ; he opposed the establishment on every opportunity ; and on one of the last days he spoke upon the subject, when it was argued, that no saving would be made by reduction, he said, “ that if they saved nothing else, they would at least, save the constitution.”

Now these expressions are not the declamation of a school-boy eager to display his oratory ; nor are they the absurd ravings of a demagogue ; nor are they the overflowings of an ambitious spirit, embittered by a long life of fruitless opposition ; they are the deliberate opinions of a statesman, who, in early life, was the colleague of Mr. Pitt ; who was at one time Speaker of the House of Commons ; whose knowledge of the constitution was never questioned ; who was never accused of courting popular applause ; and who, the very year before, had supported the same ministers in their war against Napoleon Bonaparte. Such opinions, from such an authority, may well make us en-

quire, what is the real danger to be apprehended to freedom from a large standing army. A very short examination will, I am convinced, bring every rational man to this conclusion; that the real danger to be feared is, that the whole government, consisting of its three branches, of King, Lords, and Commons, may be made to rest upon military force. Every government, and every part of government, it is well known is liable to abuse; the English constitution, however, provides this remedy for abuses, that the whole machine of the state is ventilated and visited by the air and light of popular opinion. The administration, however corrupt it may have become, is obliged to purify itself, in order to conciliate that public favour by which alone it stands. The House of Commons, however ill-constituted, must yet yield occasionally to national opinion; and either make itself a just representation of the people, or act as if it were so. But if the corrupt administrators have an army to support them, the necessity for reform vanishes,

abuses are perpetuated, and the reign of freedom is closed for ever.

It is in this point of view, that the increase of a standing army is really dangerous, and the encouragement of military habits most pernicious. And the reptile is the more to be guarded against, as it would approach without the rattle which gives warning of its vicinity, and serves as a preservative against its poison. A standing army which destroyed the freedom of England, would not march by beat of drum to Westminster and dismiss the House of Commons ; it would not proscribe the House of Peers, and deluge the streets of London with the blood of her magistrates. It would appear in the shape of a guardian of order ; it would support the authority of the two houses of parliament ; it would be hostile to none but mobs and public meetings, and shed no blood but that of labourers and journeymen. It would establish the despotic power, not of a single king, or a single general, but of

a host of corrupt senators, and half a million of petty tyrants.

Happily the projects of 1816 were defeated, a third of the army has been disbanded, and we are not yet reduced to this dreadful state of servitude. In England, the army has not yet learnt to assume a tone of superiority over their fellow-subjects, or to trample with impunity on the rights of the people. We do not yet see officers in their uniforms pretend to a higher place in society than the members of civil professions. On the contrary, when not on duty, they hasten to rid themselves of the marks of their military service, and to mix with the mass of the community. We do not yet see, as in France, a soldier employed to apprehend every delinquent, and accountable only to a court-martial if he kills his prisoner instead of securing him. The army in England are still what they ought to be ; the defenders, and not the masters of the state.

If we have avoided this danger, however,

for the present, it must not be forgotten, that we have had but a narrow escape, and that rather owing to fortune than to wisdom. It is but a few years ago, since a country gentleman said in the House of Commons, "that he should like to see soldiers keeping off the crowd that surrounds the stage-coaches in Piccadilly." Had the country, indeed, been rich and prosperous after the war, so strongly were the country gentlemen infected with the military mania, that neither the eloquence of some members of parliament, nor the indefatigable industry of others, would have saved us from an immense military establishment. Our poverty and distress have saved our constitution.

It may not be without its use, before concluding this chapter, to record the grounds on which the peace establishment of 1816 was defended. "It was rendered necessary," said the ministers, "first, on account of the increase of the military establishments of continental states, and the necessity of preserving our

station among the powers of Europe; and, secondly, because of the increase of population, and the military services required in collecting the revenue and executing the laws." These reasons may serve as a guide to teach the people of England for what purposes an army ought not to be kept up. They afford a limit and a rule for the amount of our military force. As long as the numbers of the army can be proved to be indispensable for maintaining garrisons in fortified places, and preserving a nucleus for war, the nation may consider general harangues against a standing army as puerile declamation; but when they hear it urged, that it is necessary to assimilate our peace establishment to that of the continental powers, and that a large army is rendered necessary by the increase of our population, then it is time for them to rouse themselves, and shake off, before it is too late, the burden of a military government.

## CHAP. XXXII.

OF THE INFLUENCE OF JURIES IN INTERPRETING  
AND MODIFYING THE LAWS.

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Virtue ! without thee  
There is no ruling eye, no nerve in states ;  
War has no vigour, and no safety peace ;  
Ev'n justice warps to party, laws oppress,  
Wide through the land their weak protection fails,  
First broke the balance, and then scorn'd the sword.

THOMSON.

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THE proposition, that good laws, without virtue in the society where they are established, are of little or no avail, is one so generally admitted, that it seems useless to waste a word respecting it. Perhaps there is not a more comprehensive or a more humane code of laws, than that which was provided in Spain for the government of the Indians of Mexico and Peru ; but, unfortunately, the legislators

were at Madrid, and the people to be protected working for their masters in America, without the power of enforcing their legal rights ; so that the code was of no force or value whatsoever. The converse of the proposition I have selected, however, although perhaps not formally contradicted, is not so generally impressed upon our minds. Men are easily led to believe, that where liberty and wealth have flourished, there must be some very singular excellence, some unfailing virtue, inherent in the laws, by which the state has been governed. It would be an easy task to prove, that neither at Athens, nor at Rome, nor at Florence, nor in Holland, has the form of laws reached to any great perfection. But this would probably be admitted ; and yet many would persevere in thinking that in England our ancestors had discovered some secret for making faultless laws. Blackstone has much contributed to spread this opinion. All that was established had, in his eye, a peculiar sanctity, and he praises the English constitution with

the enthusiasm of a scholar who is admitted to view the picture of a great master. The fault, indeed, was on the right side. If he refrained from pointing out many obvious improvements, he also kept alive that respect for our ancient liberties, which unprincipled statesmen find to be the greatest (would it were an efficient!) obstacle to their arbitrary innovations. It is impossible, however, to attempt any general view of the history of our government, and not to be struck with the modifications and forced interpretations, which have been accepted, in order to make law agree with the security of the state and the safety of the subject.

The first instance I shall mention is the treason law. For three centuries, we have been accustomed to appeal to the act of the 25 Edward III. as the perfection of wisdom and liberty on the subject of treason. Yet what is this law, when we come to examine it? The bold and spirited compact of a turbulent nobility with a feudal king, totally unfitted for a com-

mercial and civilized society. It provides, that the penalties of treason shall apply to those only who conspire against the life of the King, or actually levy war against him.\* Such a law as this, it is evident, was well calculated to protect the barons from being arrested for disaffection, and to give them the power of holding their private councils for rebellion undisturbed. In the progress of society, however, it was discovered, that a conspiracy to levy war, far from being an ordinary or light offence, was a crime of the utmost magnitude, dangerous alike to the safety of the King and the tranquillity of the country. What was to be done? It was obvious, that a conspiracy to levy war was not treason by the act, for no men could have been so absurd as to have specified the actual levying of war as treason, when they had already included a conspiracy to levy war under the head of compassing the King's death. If a conspiracy to levy war amounted to compassing the King's death,

\* Of the other offences made treason by the bill it is not necessary to take notice here.

*a fortiori*, the actual war must have borne that meaning, and therefore required no mention in the statute. Had they wished to include this offence of conspiracy to levy war in their statute, they would undoubtedly have said, levying war against the King, or conspiring to levy war. Indeed, so certain was the meaning of the law of Edward, that a new law making a conspiracy to levy war amount to high treason was enacted, and afterwards repealed with other new treasons at the beginning of the reign of Mary. In this dilemma, the lawyers cut the Gordian knot. They decided, that "compassing or imagining the death of the King," meant conspiring to depose him, or to imprison him, or to use force for the purpose of making him change his counsellors, or his measures; for any of these acts *might* lead to his death.\* They

\* Foster, the great authority on these subjects, says, that conspiring to imprison the King, is compassing his death; because the graves of princes are near their prisons. To stretch this trite moral observation into a snare for taking away a man's life, under pretence of explaining a law of the fourteenth century, is a refinement as absurd as it is cruel.

interpreted the offence of levying war against the King to mean a riot for any general purpose, as to pull down inclosures, or meeting-houses. These violent constructions of law, first imagined under the reign of the Tudors, put in force to shed the blood of good men under the Stuarts, crept in and flourished till they received the sanction of the upright and venerable Judge Foster in the reign of George the First. In those times of mild government, however, the engine was little wanted, and it was reserved for Mr. Pitt, to direct it against the lives of his old supporters the reformers, during the French revolutionary war. But juries refused to carry the construction as far as the court desired. It was proved, indeed, to their satisfaction, that Hardy and others had joined in associations, which had no other object than to overturn the institutions, one and all, by which the throne was surrounded. The chief justice declared there could be no doubt respecting the construction of the law. But it was impossible to convict Hardy, with-

out making all political association in opposition to the ministry liable to capital indictment, and the prisoners were therefore acquitted. Less than two years ago, some raving demagogues went beyond any thing that appears of Hardy and the constitutional society. They resolved not to obey the laws, and they recommended in their speeches physical force, as the only means of obtaining redress. Many of them were committed for high treason. But the Government recollecting the lesson their predecessors had received, declined to prosecute for that offence; and have thus tacitly abandoned a pretension dangerous to the safety of every man in the country. At the same time there can be no doubt that if an accused person were proved to have levied troops for the direct purpose of insurrection against the King, a jury would find him guilty of high treason. The law of high treason, insufficient at first for the security of the state, and afterwards a snare for the subject has thus been worked out at last into a barrier,

alike providing for the stability of the offended throne, and the safety of the innocent accused.

Let us now pass to the law of libel, — the security by which the liberty of the press is to be protected. Blackstone tells us that libels, in the sense in which we are speaking, are “malicious defamations of any person, and especially a magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule.” He tells us that “the communication of a libel to any one person, is a publication in the eye of the law;” and that “it is immaterial, with respect to the essence of a libel, whether the matter be true or false!” Thus, then, a man may be punished for any writing on the conduct of a minister which may expose him to public hatred, contempt, and ridicule; although the allegations contained in it be true, and it has only been shown to one person. To make this power more formidable, the judges were wont formerly to maintain that they alone had the power of

deciding whether the writing were libel or no; and that the jury were only called upon to decide upon the fact of the publication. Here indeed is a law of tyrants! How has the liberty of the press ever survived it?

The miracle is soon explained. — The prosecutor on the part of the crown, formerly contented himself with putting in the paper, and proving the publication, leaving it to the judge to pronounce the writing libellous. The counsel for the accused always dwelt upon the hardship of convicting any man for the publication of a writing without examining whether that writing were innocent or pernicious. The jury felt the injustice of the proceeding, and generally acquitted the accused. The libel bill of Mr. Fox, then, while it afforded a just protection to the public press, was rendered necessary to the government itself, by the breach which had taken place between the law and the men bound to administer it. By this bill juries were constituted judges of the law as well as of the fact; that is to say, they were

entitled to decide not only whether the writing in question had been published or no, but also whether it were libellous. — Thus, in this instance also, the spirit of the people amended a bad law.

I cannot leave this subject of libel without mentioning the hardship to which accused persons are still subjected by being tried by special juries. These juries are, in the country, the nominees of the crown, and often totally unfitted by their prejudices to do justice in a political cause. Surely in a case where the powers of the government are brought to bear against an individual in so delicate a matter as seditious libel, the subject ought to have a protection somewhat similar to that which he is allowed in cases of high treason, of challenging peremptorily thirty-five of the jury.

Many other cases might be mentioned, in which the verdicts of juries have operated to check the execution of a cruel or oppressive law, and in the end, to repeal, or modify the law itself. The direct perjuries of juries on

the subject of criminal law have been already mentioned; the verdicts given in cases of bankruptcy would afford many other instances of the same kind. Thus, not only are juries in fact the real judges in England, but they possess a power no judge would venture to exercise; namely, that of refusing to put the law in force. Undoubtedly this is a very dangerous power, more especially as juries consulting in secret, deciding without reason assigned, and separating without being afterwards responsible, are free from all control but that of their own consciences; — yet exercised as it has been with temper and moderation, the discretion of juries has proved extremely salutary. It has been the cause of amending many bad laws which judges would have administered with exact severity, and defended with professional bigotry; and above all, it has this important and useful consequence, that laws totally repugnant to the feelings of the community, for which they are made, cannot long prevail in England.

I have thought it useful to devote this chapter to an effect of the institution of trial by jury, hitherto little remarked ; but I am unwilling to conclude it without expressing, in the strongest manner, my own sense of the value of the institution itself. It is to trial by jury, more than even by representation, (as it at present exists,) that the people owe the share they have in the government of the country ; it is to trial by jury also, that the government mainly owes the attachment of the people to the laws ; a consideration that ought to make our legislators very cautious how they take away this mode of trial by new, trifling, and vexatious enactments.

## CHAP. XXXIV.

## INFLUENCE OF THE CROWN.

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Men are naturally propense to corruption; and if he, whose will and interest it is to corrupt them, be furnished with the means, he will never fail to do it. Power, honours, riches, and the pleasures that attend them, are the baits by which men are drawn to prefer a personal interest before the public good; and the number of those who covet them is so great, that he who abounds in them will be able to gain so many to his service as shall be sufficient to subdue the rest. It is hard to find a tyranny in the world that has not been introduced this way.

ALGERNON SIDNEY.

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THE celebrated resolution of 1780, “That the influence of the Crown has increased, is increasing, and ought to be diminished,” may seem to carry its own refutation along with it. A House of Commons that can vote a resolution so hostile to the crown, it may be

said, can have little reason to dread its influence. This objection, however, would be more specious than solid. The influence of the crown acts by slow, but continual pressure; the opinion of the people by sudden impulse. Thus a series of measures injurious to the interests and honour of the country are persisted in for a long time by mere force of authority and the private advantages which individuals acquire by supporting the system. In government, more than any thing else, possession is nine points of the law. At length the evil is carried beyond bearing: the people see they have been misled and benighted, and determine to dismiss their guides. But even then the holders of power have innumerable means of softening, perhaps of totally averting their disgrace, and they proceed for some time longer conducting the nation through fresh morasses, and involving the state in new and greater perils. Thus it was in 1780, when the party who had carried the abstract resolu-

tion before mentioned, found themselves in a minority a few weeks after, when they attempted to deduce from it a practical result.

It was in the reign of Charles II. that the plan of influencing the members of the Lower House by gifts and favours of the crown was first systematically framed. The name of “Pensioner Parliament,” given to the House of Commons which sate for seventeen years without dissolution, is a sufficient index of the general opinion concerning it. Many of the poorer members sold their vote for a very small gratuity. Offices and favours were granted to the speakers most worth buying; the rest were glad of a sum of money. The trifling sum of 10,000*l.* was allowed by Lord Clifford for the purpose of buying members. This was increased by Lord Danby. By the report of a Committee of secrecy appointed in 1678, it appears that many members received money or favours of one kind or another for their votes.

There can be no doubt that the practice was

continued during the reign of William. Sir John Trevor was convicted, when Speaker, of receiving bribes from the city of London, to procure the passing of the Orphans' Bill. Mr. Hungerford was expelled for the same offence.

These facts show how unjust it is to charge Walpole with having been the first who governed England by corruption. That he carried corruption to a great extent can hardly be doubted. He did it with a coarseness which, by destroying the shame attendant upon it, overthrew the barrier of virtue still subsisting, and extended the vice which thus openly displayed itself. He is said to have affirmed that he did not care who made members of parliament, so long as he was allowed to deal with them when they were made. Perhaps these stories were unfounded; but they threw discredit on his government.

At the time of Lord North's administration the influence of the crown was exerted in the most profuse, most shameful, and most de-

grading manner. The friends and favourites of the minister were allowed to have a share in the loan, which they sold the moment after at a gain of ten per cent.\* Mr. Fox, in his speeches, more than once accuses Lord North of having devoted 900,000*l.* of a loan to conciliate votes. It is remarkable that Mr. Fox allows at the same time, that it is natural a minister, in making a loan, should favour his own friends, and that it is not to be expected any minister will ever act otherwise. He does not venture to blame Lord North for this practice, but only for the abuse of it. Some members of parliament actually received at that time a sum of money to induce them to vote. Every office of government was a scene of confusion, waste, and prodigality, admirably adapted for the interests of all who wished to enrich themselves at the expence of honour, patriotism, and conscience. A cry for reform in the expenditure, louder than that which had overturned Walpole, was raised; and

\* Rose's Influence of the Crown.

produced the resolution mentioned at the beginning of the chapter. The wish of the nation extended to parliamentary as well as economical reform. Mr. Pitt skilfully made himself the organ of both, and on the strength of his professions obtained that credit from the people which was denied to the party who, after a long and unpopular opposition to the American war, had lost the fruits of their exertions by joining the minister who carried it on.

Since the close of the American war, Mr. Burke's Bills, and the regulations of Lord Shelburne, have made a diminution of 216 places. Mr. Pitt abolished 200 inferior offices in the salt department, the salaries of which amounted to 25,000*l.* a year.\* Besides these, since 1780 thirty-two placemen have been excluded from parliament by Mr. Burke's Bills, and to these Mr. Rose adds fifteen contractors. Some sinecures too have been lately abolished.

\* Rose on the Influence of the Crown. Ed. Review, vol. xvi. p. 191.

On the other hand, the influence of the crown has been wonderfully increased by the extension of our establishments. But it will perhaps be as well to take a short review of it as it at present exists.

The influence of the crown may be arranged under several heads : —

1. The collection of the revenue.
2. The civil list and the subordinate offices of civil government.
3. The colonies.
4. The army, navy, ordnance, &c.
5. The law.
6. The church.
7. The influence of honours.

To begin with the collection of the revenue. This expense, amounting in 1821, to upwards of four millions sterling more than the whole expense of the debt and government at the beginning of the late king's reign, and of which 1,800,000*l.* consists of salaries and superannuations, is one of the most powerful instruments of government. The number of

persons employed in the customs alone, in 1821, was 6,864. The salaries, £38,000<sup>L</sup>. In the excise, in 1821, the number of persons employed, was 5,625. The salaries, £38,000<sup>L</sup>\* Including England, Scotland, and Ireland, however, the number of officers employed in the customs only are nearly 9000. Offices in the post office, the stamp office, and the customs especially, are made part of the patronage of members of parliament voting in favour of government. So likewise are the offices of receiver general in counties, and so likewise are frequently the higher offices of commissioners of excise and customs. But even the patronage of the smaller offices, though the exercise of it may give little satisfaction to the minister or the member of parliament, who may be sometimes heard to declare, that they would gladly be quit of it, is a powerful means of persuasion with that numerous class of men, who prefer a favour from government to any.

\* Lord Londonderry's speech on Mr. Brougham's motion, June 25, 1822.

other means of earning their bread. Hence this extensive and minute net catches in its meshes a vast number both of the large and the small fish, and especially in little boroughs, where poverty and idleness make men hungry and unscrupulous.

The minister, seeing his advantage, has of late years more completely organized and adapted this kind of patronage to the purpose of parliamentary influence. When an office in the stamp or post office is vacant, the treasury write to the member for the county or borough voting with government, and ask for his recommendation. Many applications of course are made to him by his constituents, and by him to the first lord of the treasury. Let it be observed in candour, however, that it is not to be supposed that gentlemen of independent fortune barter their consciences for the miserable consideration of this small patronage. But those who are already favourable to government, are enabled to retain their seats by this method, and the habit of

asking for assistance brings them into a closer and less reputable connection with the minister than they would otherwise maintain. To this dangerous practice may be attributed the slippery and deviating conduct of some country gentlemen, whose predecessors in times past were remarkable for stoutness and honest obstinacy.

2. The civil list and the subordinate places of administration.

The sum appropriated to what have been always held to be civil list services, amounts to a million and a half. Besides this, however, other charges are made permanent in the consolidated fund, which formerly would have been included under the head of civil list, so as to raise this head of expence to upwards of 2,000,000*l*. But by late arrangements, so much has been separated from the civil list, and forms part of the supplies voted every year, as to reduce the civil list nominally to about 1,100,000*l*. The civil list, properly so called, is granted to the king for his life at the

commencement of his reign. It comprehends the expences of the royal household and palaces, the salaries of the officers belonging thereto; a pension list, a privy purse at the king's own disposal, consisting of 60,000*l.*; a part of the expence of the civil government and judges, and the whole of the foreign ministers and ambassadors. This last charge alone amounts to near 300,000*l.*

We have now ambassadors at Paris, Brussels, Petersburgh, and Vienna, at 12,000*l.* a year; a minister at Berlin, at 7000*l.*; in America, at 6,000*l.*, (exceeding the salary of the president of the United States,) and several smaller images of the sovereign dotted over the small courts of Germany, at 4 and 5,000*l.* a year. These are very valuable offices, and give great influence to the minister. But those which are of more immediate use to him are the places connected with the government at home. About eighty\* members holding these

\* There are in fact eighty-seven, but several of these places are nominal, or have been granted for life very long ago.

favours from the crown, and receiving salaries amounting to 160,000*l.*, have seats in the House of Commons, where they are found to be among the most assiduous in their attendance, and the least open to conviction of any members of the house. Indeed, it is considered, that as long as they hold these places they are bound to agree with the minister; and a lord of the bed-chamber was deprived of his place only last year, 1821, for a vote in favour of the repeal of the malt tax, against the desire of the minister. The choice, to be sure, always rests with the holder of the office; and the minister may justly and fairly say, that he will not confer offices in his gift upon men who have no confidence in his measures. But the liberty of quitting a lucrative office, singly and unsupported, is one that is rarely exercised, and conscience is seldom hardhearted enough to ruin a man for her sake. It were therefore to be wished, that as few occasions as possible should be created of reducing men to a choice between their interest and their

duty. For this purpose it is desirable, that the holders of offices not immediately connected with the administration, and whose presence is not required in the House of Commons, should be disabled from sitting in parliament. This is the language of morality, of the constitution, and of the law. Two acts of parliament, one of 1705, and another of 1742, exclude persons holding certain offices, therein named, and any new office created since the act of Anne, or having a pension during pleasure, from sitting in parliament. In later times, however, when a new office has been created, the provisions of the act of Anne have been at the same time dispensed with. This is the case with the members of the India board, and the vice-treasurer of Ireland.

The pensions granted by the crown, or placed by parliament on the consolidated fund, amount altogether to about 400,000*l.* A great part of these come under the head of civil list, and have been already mentioned. But, this repetition suggests the observation, that

every head of expence is so divided and separated into different accounts, that it requires much time and labour to disentangle them. If we wish to know the salary of the judges, we must look in two different places ; if we desire to ascertain the sums received by junior members of the royal family, we must look in five or six. There are likewise pensions to the amount of 42,000*l.*, per annum, created by an act of parliament, for the purpose of rewarding those who have served in “high and efficient public offices.”

This provision is a substitute for the ancient system of sinecures, which were usually, if not always, granted to old servants of the public, or their sons. It is certain, that less odium is likely to be excited by the grant of a pension to one whose services are known, than by the holding of an office without duty, by one who is the son of, or perhaps has no connection with a public servant. On the other hand, the arrangement is far from being an economical one, and whilst it professes to grant a pecu-

niary reward indiscriminately to all who have held high offices for a certain time, it may very well happen, that many will receive the pension, whose wealth makes it unnecessary; and that the son of a great statesman, born without fortune, and worn out in the service of his country, may be left almost a beggar. There is some injustice in the public mind on these subjects. If ever a man deserved that his son should have the means of accumulating a fortune, it was lord Camden; yet his services were completely forgotten, when, many years after his death, his son was known to receive the legal salary of a sinecure place. Nor has sufficient justice been done to that noble generosity to his country, with which the present lord Camden surrendered, a few years ago, the greater part of his emoluments.

3. The Colonies cannot fail to be a fruitful source of influence. They are found in every quarter of the globe: Malta, the Ionian Islands, the Cape of Good Hope, Ceylon, and several West India Islands, have been

acquired since 1780. It has been estimated, on good grounds, that 800 new civil and military places have been created in the colonies since that time.—But even the Indian empire, though under the government of a trading company, contributes its share of ministerial patronage. The appointments to India were in 1792 about 139; in 1820, 527. A fourteenth of these appointments is directly in the hands of the President of the Board of Controul; that is to say, about 38 places yearly, or a general patronage of about 400 offices, great and small.\*

#### 4. The Army, Navy, Ordnance, &c.

The patronage attached to a large establishment of military and naval forces must necessarily give a great influence to the Crown. After the peace, there were not less than 600 generals in the English service. In 1780, we had 2,000 military officers; at present we have 19,000 on full and half-pay. In 1780,

\* Mr. Brougham's speech on the Influence of the Crown, June 25. 1822.

we had about 1,800 naval officers ; at present we have about 8,400 in full and half-pay ; thus making about 27,000 officers in army and navy only. The army, in 1821, cost nearly nine millions, the navy about six.

The establishment for the year 1821, exclusive of the civil list, and permanent charges on the consolidated fund, may be reckoned at 18,000,000*l.*\* Adding to this, the collection of the revenue, and other disbursements, the Government have about 25,000,000*l.* to spend among 20,000,000 of people, which may be compared to an individual having 25,000*l.* a year to spend in a district containing 20,000 inhabitants. The expenditure of a government, however, creates much more influence than that of an individual, as so great a part of it consists in offices and salaries.

5. The Law. — This profession has been justly compared to a lottery with a few great prizes. — But as every man who has a ticket

\* Lord Londonderry's Speech. as above.

in the lottery expects the 20,000*l.* prize; so the great prizes in the law animate every member of the profession to hope and exertion. Passing by the offices of Attorney and Solicitor General, the former of which is worth at least 10,000*l.* a year; passing by also even the dignity of Chief Justice, the post of Lord Chancellor is well worth a moment's attention. It is the noblest prize that is offered in this country to industry and talent. The Lord Chancellor receives a splendid income of upwards of 20,000*l.* a year; he disposes by his decisions of the property of all the wealthiest families and greatest persons in the kingdom; he presides in the House of Lords over all the hereditary aristocracy of the land; in the closet, he is keeper of the King's conscience, and always one of the most powerful of the confidential advisers of the Sovereign. To attain this eminence, no distinction of birth, no interest of connection is necessary; no minister's cousin; no great peer's offspring; no "tenth transmitter of a foolish face" can fill

this laborious and difficult office; it is to be attained by merit and industry, and may be given to a chimney-sweeper's son.—Even political knowledge is not requisite, and no other opinions are required than a disposition to conform with the ministerial creed.—What a prize for talent! what a temptation for virtue!

6. In the church, there are, in England alone, in the gift of the Crown, 2 archbishoprics, 24 bishoprics, 38 deaneries, 46 prebends, and 1,020 livings. The larger bishoprics give from 15 to 20,000*l.* per annum; the bishopric of Durham is a kind of principality, and they all of them have a patronage of livings, which, in some instances, afford a rich provision for a whole family. The lands belonging to the bishoprics are let on leases for lives, so that when a life falls in, but especially if two lives fall in before the bargain is completed, a large fine accrues to the bishop. In this way, even in some of the inferior bishoprics, a fortune of two or three hundred thousand pounds has been made. At the same

time, there are several that are very poor; and the bishopric of Llandaff is said to be under 1,000*l.* a year.

The church of Ireland is still more richly endowed. There are in Ireland 4 archbishops, and 18 bishops, whose united income is estimated at 185,700*l.* a year. The bishop of Derry has 15,000*l.* a year, the bishop of Elphin 12,000*l.*, the bishop of Raphoe 10,000*l.*, and none are under 4,000*l.* a year. But besides this acknowledged income, the revenue the Irish bishops draw from fines is enormous; their landed property is immense; leases are for 21 years, and fines are taken every seven, or even every three years; thus becoming a kind of triennial rents. Mr. Wakefield calculates that the estates of the following sees would, if fairly let, bring the under-mentioned sums: The primacy of Armagh 140,000*l.* a year, the see of Derry 120,000*l.*, the see of Kilmore 100,000*l.*, the see of Clogher 100,000*l.*, the see of Waterford 70,000*l.* The patronage is extremely valuable. In the bishopric of

Cloyne, one living is worth 3,000*l.* a year, one 2,000*l.*, one 1,800*l.*, and six from 1,500*l.* to 1,200*l.*: the whole of the livings in the gift of the bishop of Cloyne are valued at 50,000*l.* a year. There are about 1,300 benefices in Ireland, upwards of 200 of which are in the gift of the crown.

The manner in which the influence of the crown is exercised in these four great bodies, the army, the navy, the law, and the church, is extremely different. In the army, governed as it is by a Prince of the Royal Family, for the sake of the army itself, and not for the sake of the ministry, political connections make no difference, except in the highest favours, where the minister interferes. An officer who distinguishes himself in action has the same chance of promotion whether his opinions are Whig or Tory. If some are favoured, and others neglected, the difference is not founded upon the parliamentary votes which may be obtained by an unjust partiality; or

if it is ever so, the instances at least are extremely rare.

The navy, being under the direction of a cabinet minister, is not so purely conducted. Many an officer owes his advance, many a civil servant his place to an election interest. Yet there is no bar to merit, and a man of signal talents and courage is almost sure to rise, be his family as obscure or as obnoxious as possible.

The law appointments are necessarily made on a very different principle. The inferior offices, if inferior they can now be called, of Attorney and Solicitor, imply a determination to support the measures of government, when called upon, as thoroughly as the interests of any private client whom a lawyer undertakes to defend. The path to the office of Judge very frequently, and to the office of lord Chancellor almost always, passes through these offices. It follows, that the road of ambition for a lawyer, is to attach himself to the governing party in the state.

In the church, the immense and valuable patronage of government is uniformly bestowed on their political adherents. No talents, no learning, no piety can advance the fortune of a clergyman whose political opinions are adverse to those of the governing party. The utmost that is permitted to a bishop is moderation in his manner of maintaining the orthodox political faith; any hesitation in his vote is an unpardonable sin. He may be a high Calvinist, or a controversial Arminian; a bigoted enemy of all other religious opinions; or an enlightened friend of toleration; but if he shews himself of a different creed from his patrons in civil concerns, and is guilty of political heresy, his further rise is stopt for ever.

It is curious to remark the differences created by these different modes of conferring patronage on the different tempers of the various professions which have been reviewed.

The army is by its nature a favourer of power in a single hand, and therefore attached

to the prerogative more than to the popular part of the Constitution. But the various family connections of the officers, and the accustomed frankness of the profession lead to differences of opinion uttered without disguise, and generally maintained through life without tergiversation.—Only it is to be observed that whilst a military life seldom, if ever, converts a Tory into a Whig, it not unfrequently imbues a Whig with the despotic notions of a Tory. Upon the whole, it is better to rely on the honourable feelings than on the constitutional opinions of the army; and if an open attack on liberty is little to be dreaded from them, our security is rather to be attributed to the strength of their private connections than to an enlightened view of their public duty.

The navy, on the other hand, have almost as decided a bias in favour of liberty, as the army have in favour of power. The general feeling that a naval force cannot be employed to suppress freedom, and the praises that have

from immemorial time been bestowed upon the navy, as the constitutional force, combined, perhaps, with some jealousy of the army, lead them to consider themselves as the natural friends of the liberties of England. Some great examples, indeed, might be quoted of high naval commands obtained by political subserviency ; but, generally speaking, the navy of great Britain are distinguished for liberality of sentiment, and a generous sympathy with the cause of freedom all over the world.

Of the law much has been already said. It is the general tendency of this profession to give men a rooted attachment to the institutions by whose rules all their decisions are made. But their attachment, it must be confessed, is seldom of a very discriminating nature ; and if, on the one hand, they kindle with indignation when the ancient rights of the people are trampled upon, on the other, they fire with almost equal zeal, if an attempt is made to moderate the cruel spirit of ancient legisla-

tion. Generally speaking, however, the first disposition of a lawyer, it must be confessed, is to enquire boldly and argue sharply upon public abuses. They are not apt to indulge any bigotted reverence for the depositaries of power; and, on the other hand, they value liberty as the guardian of free speech. But the close of a lawyer's life is not always conformable to his outset; many who commence by too warm an admiration for popular privileges, end by too frigid a contempt for all enthusiasm. They are accustomed to let their tongues for the hour, and by a natural transition, they sell them for a term of years, or for life. Commencing with the vanity of popular harangues, they end by the meanest calculations of avarice. So frequently has such a change happened, though indeed but seldom in proportion to the whole number of lawyers, that the profession has become, we have seen how unjustly, a bye-word with many for apostacy and servility.

The church has not to reproach itself with

the same tergiversation in its members. Connected with power and office by their very profession, all members of the church have an original tendency, not easily overcome, to take the side of government; and those who desire to rise to distinction in the hierarchy, generally make a display of servility as the surest means of elevation — or if raised by some rare accident from real merit, superadd a varnish of adulation to their other acquirements. Yet, it must be said, that a cringing churchman has not that scoffing contempt of virtue, and affected disbelief of all public principle, which distinguish the apostate lawyer. These symptoms arise from galled and irritated conscience, and therefore are not seen in the clergy whose habits gain from education a genuine and sincere belief in the duty of submission to the powers that be. There are, however, a number of clergymen whose honourable and enlightened opinions make them at once proscribed and respected.

### 7. The influence of honours.

Among the higher classes of society, no reward operates more effectually than a star, an earldom, or a marquisate. Persons of great wealth are not to be caught by a pecuniary bribe ; they are above the temptation of mere money ; indeed there are some who, being already in possession of large fortunes, imagine they shew a very high spirit when they refuse an office which joins a salary they do not want, to labour they do not like. But if these persons are offered a ribband, or a step in the peerage, they no longer feel the same reluctance ; on the contrary, they imagine it shows a disinterested spirit to accept, and even solicit a favour which costs the country nothing. Thus many who cannot be caught by the bait of covetousness, are caught by the bait of vanity, and render themselves the obliged servants of a minister for the sake of a nominal honour. Indeed, so effectual is this tie upon a class of men who can be influenced no

other way, that it was one of the great means of government employed by Lewis XIV. to attach his nobility to his person. To receive, indeed, the star of an order of knighthood, as a recompense for services performed either in the cabinet or the field ; to be thus marked out by the sovereign for the respect and admiration of his people is, indeed, an honour of which an honest man may well be proud ; but when these illustrations are given to those who have no claim but that of being born noblemen, they form a distinction without a difference, and merely point out those who wear them as the sworn adherents of the first lord of the Treasury.

Thus we have knights of the Garter, knights of St. Patrick, knights of the Thistle, many of whom have performed all their services to their country, by deputy, in supporting the minister in the House of Commons. I will not mention the order of the Bath, as that is generally given to real merit. A much greater influence, however, is exercised

by conferring peerages. In 1780 there were 225 peers ; there are now 378. Besides this, the different ranks in the peerage form a magazine of patronage, a step being now given from baron to earl, as commonly as from ensign to lieutenant. In 1780 there was but one marquis, and now there are 18 ; in 1780 there were 78 earls, now 109.

If we here sum up, in a few words, the influence of the crown, we shall have to reckon new peerages, and steps in the peerage, bestowed with great profusion ; ribbands, blue, red, and green ; six archbishoprics, and 42 bishoprics, some of them of 20,000*l.*, and many above 8,000*l.* a year in value ; military and civil commands in Ireland, India, Ionian Islands, Gibraltar, Jamaica, Barbadoes, Trinidad, Cape of Good Hope, Canada, &c. &c. ; embassies to Paris, Vienna, Petersburgh, and Brussels of 12,000*l.* a year each ; many others of 7,000*l.*, 6,000*l.*, and 5,000*l.* ; others of 3,000*l.* and 2000*l.* ; regiments in the army ; ships in the navy ; offices of all kinds at home and abroad ;

more than a million of civil list, containing Lord Chamberlains, Lord Stewards, and numerous inferior offices ; rich livings falling in every week ; valuable appointments to India greatly increased in amount ; about two millions for salaries in the offices for collection of the revenue, and two millions more for expences ; retired allowances to a tenth of that sum ; clerkships, hospitals, contracts, &c., and an establishment costing, in the whole, 18,000,000*l.* a year.

In spite of all this, there are persons who still maintain that the influence of the crown is not increased ; but one should imagine, that such persons purposely shut their eyes, before they venture to maintain so extraordinary a paradox. To avoid all debate, however, it may be useful to refer to times somewhat remote, and compare the influence of the crown in those days to that which exists at the present moment. It were well, indeed, that those who value their liberty would apply this method to several other parts of our government ; for power

creeps on by degrees, and imperceptibly makes approaches, which, in time, enable the hired troops of despotism to batter the citadel of the constitution itself. Thus, in the history of Rome, the progress which was made towards decline during the life of one man, might be so gradual as to escape his notice ; yet, when the historian comes to review that period, he shall find the tendency to decay so perceptible, that he will not hesitate to mark, as causes pregnant with the ruin of the state, acts and occurrences which the contemporary Roman citizen may have allowed to pass unheeded.

If applying this rule, we compare the influence of the crown during the reign of William III. with that which exists at present, how prodigious is the difference ! William was forced to dismiss his Dutch guards, and to content himself in times of great peril with maintaining no more than 7000 troops in England. He was obliged, against his will, to pass the Triennial Bill, and frequently altered his measures in consequence of the expressed

sentiments of his Parliament. In our days, the machine has rolled on so smoothly, that with one or two exceptions, the ministry have met with no resistance to their will. Perhaps this is better ; I am only saying, it is different from the reign of William III.

In closing this article, it ought not be omitted that when we say the influence of the crown is increased, it by no means follows that the influence of the king is equally augmented ; indeed it may be directly the reverse. A minister, especially if he has been long in office, may have so engaged and corrupted the great proprietors of boroughs ; may have so distributed honours, and ribbands, and offices ; may have so obliged the principal members of the House of Commons, by providing for their friends and relations in the customs, the excise, or the colonies ; may have so fettered every public man of weight and influence by the ties of private interest, that at last they shall be enabled to say to their sovereign, “ however pernicious our measures may be, and however

unpopular our persons, you must maintain us in power, for we alone can command a majority in the House of Commons, though our conduct and our acts are disgusting to the country, and offensive to your majesty." Such a state of things would prove more than any thing the overgrown influence of the crown, though it would be equally at variance with the just influence of the king, and the true spirit of the constitution.

Let us conclude this chapter with the hope, that as the influence of the crown is so greatly and so dangerously increased, it may be met by a new and determined spirit in the people, neither to be cajoled by specious falsehoods, nor fatigued by repeated evasions.

## CHAP. XXXV.

## PUBLIC OPINION. — RESTRICTIVE LAWS.

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Per me ho adottata nell' intero la legge d'Inghilterra, ed a quella mi attengo; nè fo mai nessuno scritto che non potesse liberissimamente e senza biasimo nessuno dell' autore essere stampato nella beata e veramente sola libera Inghilterra. Opinion, quanti se ne vuole: individui offesi, nessuni: costumi, rispettati sempre. Queste sono state, e seranno sempre le sole mie leggi; nè altre se ne può ragionevolmente amettere, nè rispettare.

ALPIERI, *Vita*, t. ii. p. 155.

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IN reply to all complaints of the overgrown influence of the crown, it is the fashion to point out the increased and increasing influence of public opinion. There can be no doubt that public opinion acquired prodigious force during the late reign. The publication of the debates in parliament, and the general diffusion of political knowledge, form a most important innovation. The censor of the Roman republic, however austere in the exercise of

his functions, could never equal in minuteness of enquiry, or severity of rebuke, the unseen and irresponsible public of the British Empire. What statesman can hear with unshaken nerves that voice, which, beginning in the whispers of the metropolis, rises into the loud tone of defiance, within the walls of parliament, and is then prolonged by means of the hundred mouths of the press, till its innumerable echoes rebound from the shores of Cornwall, and the mountains of Inverness? What minister, however profligate in his notions, does not, in his parliamentary language, endeavour, in some degree, to conciliate the uncorrupted mind of the multitude?

The effect of this power is, however, very vaguely estimated, when it is said that public opinion overbalances any advantage the crown may derive from the increase of the standing army, or the extension of its influence. In the first place, this argument proves too much, for if public opinion is a sufficient counterpoise to power, why should we maintain the Habeas Corpus Act, or Magna Charta, or continue

the existence of Parliament itself? Nor is the power of opinion, as some suppose, a complete novelty in this country, or an exclusive attribute of a free constitution. It was public opinion which induced the soldiers on Hounslow Heath to shout when the Bishops were acquitted; it was public opinion which obliged Sir Robert Walpole to relinquish the excise scheme. Even in despotic countries opinion has its weight: it dismissed Squillace from the government of Spain, and strangled the Emperor Paul, the unlimited autocrat of Russia. In Turkey, also, we are told, that when the people are discontented, they set fire to a house. It is the custom for the Sultan always to assist at a fire, and thus an opportunity is found of telling him those unpleasant truths, which would never otherwise reach his ear. This, to be sure, is a strange method of giving constitutional advice.

The chief advantage, then, of a free government, is not the existence of public opinion, but that it is exerted in favour of the wholesome rights and established liberties of the

people. Looking at the subject then in this point of view, I own, I doubt whether public opinion has increased so much in quality, value, and weight, as it has in bulk and velocity. A few observations may assist us in forming a judgment on this question.

Whatever may have been the reasons, good or bad, which induced the government of this country to undertake a war against the insurgent colonies of America, and whatever may have been the policy, or even the necessity of entering into a contest with the French republic, it cannot be denied that the object of both these wars was to oppose popular revolution, and that their spirit was contrary to popular principles. It may be said, indeed, that both of these wars were supported by the full concurrence of the people of this country. But this objection takes away nothing from the weight of the observation which I wish to make. It must be recollected, that a high-spirited nation is easily incited to take arms ; and, whether they do so, in a cause congenial or adverse to freedom, depends entirely upon

the occasion which presents itself, and the use which is made of it by those whose talents qualify them to direct public opinion. Now the occasions upon which both of the wars before alluded to, arose, were the resistance of a people to its government; and the arguments adopted to induce this country to declare war, were chiefly an appeal to its insulted dignity; and to its feelings of loyalty and piety. During a long period of the late reign, comprising more than half of its extended duration, no attempts were wanting to inflame the public mind, daily and hourly, against the rebellious subjects of our own king, and against a neighbouring nation, which deposed and executed its sovereign. It is impossible but that these invectives must have had their effect, and it can create surprise in no one that a country so excited, so taught, and so inflamed, and that too by one of the most eloquent writers, and one of the most eloquent speakers whom England has produced, should become at last extremely alive to every supposed mis-

demeanour against prerogative, and completely dull and insensible to any violation of constitutional rights. Nor will those escape blame in the page of history, if any such there were, who led the people on by exaggerated representations of facts ; who inflamed their imagination by highly-coloured pictures of carnage and of murder, and endeavoured to put a stop to internal bloodshed in one nation, by extending slaughter and desolation to every state in Europe, and every region of the globe. The example of the French Revolution, however, has had an influence still more direct on the progress of our affairs : the French Revolution is ascribed to every thing, and every thing is ascribed to the French Revolution. If a book is written, containing new opinions on subjects of philosophy and literature, we are told to avoid them, for to Voltaire and Rousseau is to be attributed the French Revolution. If an ignorant cobler harangues a ragged mob in Smithfield, we are told that the state is in danger, for the fury of a mob was the beginning of the French Revolution. If

there is discontent in the manufacturing towns, we are told that the discontent of the manufacturing towns in France was the great cause of the French Revolution. Nay ; even if it is proposed to allow a proprietor of land to shoot partridges and hares on his own ground, we are told that this would be to admit the doctrine of natural rights, the source of all the evils of the French Revolution.\*

It is in vain that these absurd clamours are repeatedly refuted ; it is in vain that it is shown that the French Revolution arose from one simple cause, the discordance of a brave and enlightened people, with a corrupt, bigoted, and despotic government ; it is in vain that the atrocities of the revolution are shown to have been owing partly to the character of the people, partly to the cruel oppressions of their former rulers, and partly to the alarm excited by foreign interference. It is in vain to observe, that no comparison can be drawn between a country which had no constitution

\* See Parliamentary Debates, 1819.

and no freedom; and one which has a constitution, and where the whole people are free. The voice of reason is not listened to; the whole precedent is taken in the gross as a receipt in full for every bad law; for every ancient abuse; for maintaining error, and applauding incapacity. It is as if a patient were worn out with bad fare, and exhausted with debility, and a physician should administer copious bleedings, because his next-door neighbour was dying of a pleurisy.

In the next place, it is very evident that esteem for constitutional learning, and respect for ancient forms and usages is very much diminished. This, no doubt, is owing to the increase of mercantile men, who have not, like our landed gentlemen and magistrates, the habit of looking into law-books, and referring to acts of parliament. It is also partly owing to the pressure of great evils, which have sometimes made a necessity, real or supposed, of overlooking rules and maxims, to remedy an urgent danger. Whatever be the causes,

however, the consequence is very grievous. The forms of Parliament and of the constitution, as has been before observed, oppose in themselves a great barrier to the strides of arbitrary power. The violation of those forms ought to serve as a signal that an enemy is in sight, and the people should be prepared at once to take part against a measure appearing under such inauspicious colours. This feeling, however, being now weakened, it is in the power of a minister to dispense with precedent and usage, whenever they stand in the way of convenience and expediency, and thus all the guards and outworks of freedom, on which her security so much depends, are yielded without a blow.

Another loss for the cause of liberty is to be found in the extinction of the race of the Pretender. As long as the Stuarts maintained their claim to the crown, the King was obliged to make up in good government what he wanted in legitimate right. A great part of the church, and their peculiar adherents,

allowed the doctrines of the Whigs to prevail, that they might exclude those of the Pope; they permitted liberty for the sake of religion. But at present, the King's advisers have no fear of a successful rival, and the church having been saved by the Whigs, think it consistent with propriety and dignity to calumniate them, and the cause of liberty itself. They have accordingly revived, in a less odious form, the doctrine of passive submission, and they have carried along with them that immense rabble, who think "the people are born with a saddle on their backs, and the King with a whip and spurs to ride them."

There is another cause of the corruption of public opinion to be found in the enormous growth of our manufacturing towns. These towns, having risen to sudden wealth and importance, have, generally speaking, no representatives in parliament, and the people they contain seldom attend to the affairs of their country, with a view to any practical decision. Hence, their notions of government vary with

every breath of prosperity or adverse fortune: at one time they are indifferent when the whole constitution is menaced; at another, they listen to revolutionary plans and incomprehensible reforms.

There is another circumstance with respect to public opinion, which is of more importance than any. It is, that opinion has become much more sensitive, and men are more disposed to go to extremes than they ever were before.

Of the causes and consequences of this nervous irritability, it may be useful to give some account.

When, at the beginning of the late reign, education and wealth, and the publication of the debates, brought the politics of the day within the sphere of a larger portion of the community than had hitherto attended to them, it was not to be expected that the new observers should immediately understand the movements of so complicated a machine as the English Constitution. Except from the newspapers, their only knowledge of

its principles was from books. Hence, according to their several dispositions, they took up with axioms wholly foreign to the practice of the best times. The abettors of the Tories, for instance, maintained, that the prerogative entitled the king to name his own ministers, and that whoever should interfere either with advice or remonstrance on such a subject, would be almost guilty of treason. The new allies of the Whigs, on the other hand, thought that they were speaking in the true spirit of the Constitution, when they said, that the House of Commons ought to be entirely independent both of the Crown and the House of Peers. To the Tory party the maxims of their new friends could not fail to be agreeable, as they were quite reconcileable to their conduct, and, indeed, were, in many instances, only a revival of their old doctrines, which had been exploded by the Revolution of 1688. But some of the opinions of the new popular party were by no means so favourable to the Whigs. One instance of this may be mentioned. It

is the demand of the popular part of the country, that every political leader should, from the beginning of his life to the end, preserve the most rigid and undeviating consistency. Now, if this meant only, that he should remain constant to the same great principles — that having been an advocate for the Catholic Emancipation, he should not turn against it — that having been against the French war, he should not of a sudden defend it — nothing in my mind, could be more just than to require such consistency. The opposite would show want of honesty or want of firmness, either of which would make a statesman unfit to be trusted. But the consistency required is of another and more difficult kind. Whatever means a public man has recommended as fit to be adopted in one state of the country, he is required to promote at another and very different period ; whatever expressions he has let drop in the heat of debate, imperfectly caught up by a reporter in the gallery, he is required to accept and adhere to as his creed :

and if ever he should be in power, he is to pay no attention to the commands of prudence, he is to give no time to smooth the obstacles which his opponents in a long course of years have built up: but he is to rush headlong into a precipitate course of action, under pain of being branded as an apostate, and loaded with the reproach of corruption, selfishness, and profligacy. It will be very easy to give an instance of this from recent history. When Mr. Fox came last into power, his mind was fixed upon two things—the Abolition of the Slave Trade—and Peace. In order to accomplish these first ends of his ambition he endeavoured to form an administration which the Court might not be inclined, or might not be able, immediately to overthrow. But how ill were his great views seconded by those who professed to have in view the same objects with himself! Every concession, however unimportant in principle, which he made to his new colleagues, was seized upon with avidity as a proof of degeneracy, and quoted

against a whole life of struggle. Nor did his enemies confine themselves to truth. At the risk of being thought factious, he opposed a monument to Mr. Pitt; and not long after it was said that he supported it. But the great clamour, as we may all recollect, was on the subject of the income tax. It was found necessary to raise the income tax to ten per cent., Mr. Fox declaring, that he thought it a very bad tax, but that his predecessors had left him no choice. Was this true or was it not? If it was not, why has no one ever attempted to show what other resources were left for the administration? If it was true, why is Mr. Fox cruelly reviled for that which was not his own doing? If, indeed, he had persisted in the war, without negotiating for peace, and had then proposed an income tax, he might have been accused of inconsistency; but if our financial means had been overworked by the war of the year before, there was then no alternative for Mr. Fox but to impose taxes of which he disapproved; or to say to the enemy,

‘Our resources are exhausted — we surrender at discretion.’ Yet there is no reproach, no invective, which has not been directed against Mr. Fox for his supposed inconsistency! His memory has been pursued with calumny so frequent, that even the best minds have been tainted with prejudice against him; and his name remains as a beacon for all prudent men to avoid his generous devotion, and a monument of the ingratitude of mankind to those who endeavour to spare their lives or promote their welfare. Let him who aspires to the world’s power and the world’s favour, set fire to the faggots of persecution, or give a loose to the ambition of conquest ; let him tie down the human race by superstition, or waste them by the sword ; but if he wishes to be followed in his lifetime, and adored after his death by the greater portion of his country or of the globe, let him beware how he pleads the cause of freedom, of toleration, of humanity, or of peace!

It must be owned, certainly, that the se-

verity of popular criticism checks some of those unprincipled bargains and sudden turns which used formerly to prevail among political parties. The extreme jealousy of the public mind with respect to character, however, often tends greatly to the advantage of the court. Not only are its enemies divided and dispirited by the shackles that are thrown upon them, but ministers and courtiers are at the same time mainly free from this restraint. Those who coalesce with the men in power, those who are converts to the treasury, find in the rewards of office a solid compensation for any hooting they may undergo. Whilst their adversaries are obliged to suspend their attention to public affairs, in order to reconcile some discrepancy which appears between their opinions on reform, at an interval of twenty years, they who limit their humble ambition to office, change their whole dress, and appear with great self-applause in an entire new suit of principles, opinions, sentiments, and votes. While such profligacy is openly rewarded, all permanent union in opposition to

it is branded as want of principle, and we have seen, in our own day, a party regularly organized for the purpose of preaching against party. Nothing, of course, can be more agreeable to the court with whom, indeed, this language originated. If they could once divide their opponents, and bring a third of them to oppose rashly and inopportunedly, and another third to oppose weakly and seldom, the court battle would be half gained. The only solid hope of having any government carried on would then rest on the ministry, and however ingenious the objections that might be made to their measures, no man could safely say that he preferred the public views of opposition to those of the ministry. The tools of administration, are, therefore, most ready to join in decrying party. They are still more pleased when the self-styled reformers go a step farther, and reprobate that very party which is opposed to the Court. Thus it is that the ministers of the King, and the would-be preceptors of the multitude, unite in philippics against that party to which the House of

Brunswick owes its crown, and the people its Bill of Rights. The rise of this new body in the state, is, perhaps, the most fortunate thing for the progress of the crown which has occurred since the Revolution. For whilst its members are active in propagating all the old court echoes of the mischief of party,—the corruption of all public men ; that Whigs are Tories out of power, and Tories Whigs in power ; another ministry would act just like the present ; and a hundred more such doctrines, — they contain within themselves a principle of destruction, which will prevent their ever becoming really formidable to the government. The creed which inculcates a distrust of all public men, applies as well to their own leaders, as to those of other parties. The experience of the last few years has brought this to the test. If the new party complained of the want of public spirit among the Whigs, and if a newer pretended to expose the mock patriotism of the first seceders, there still arose fresh sectaries, who did not fail to declaim against the overbearing and

aristocratical insolence of the Calvinistic church. At the same time these renowned leaders, whilst they made themselves weaker and weaker by division, displayed every thing which was wanton and inflammatory in language, together with all that was feeble and futile in conduct. Provocations to revolution were not insinuated at secret clubs, and taught by degrees to desperate and misguided followers, but openly proclaimed to mixed crowds, composed of the idle and the curious, as well as of the mischievous and the seditious. Like other novelties, violence of language and avowals of rebellion had at first their attraction : but the people soon began to be tired of hearing the same speeches on the same subjects, and with those who could find work, two or even one shilling's worth of meat and clothes, were soon found to outweigh in value the froth and frippery of a cobbling orator. But the blow was struck : the speeches that had been made, the resolutions that had been passed, and the numbers that had been present at the scene, formed intelligence suffici-

ently alarming to all who suffered themselves to be alarmed; and although the real actors were as nothing when opposed to the King, the House of Lords, the House of Commons, the Army, the Navy, the Clergy, the Bar, the Yeomanry, and the great body of the commerce and trade of the country; yet they were fully sufficient to excite a temporary panic, and to force the concurrence of great majorities in Parliament to measures totally opposite to the genius of the constitution.

Thus, the House of Commons more than once has met, perfectly disposed to bear its part in passing any measures of severe coercion, which the ministers of the day thought fit to propose. It was thus that, in 1795 and in 1799, laws were passed to prohibit public meetings without a sufficient authority, and to prevent printing, unless under certain regulations. In 1817 these measures were renewed, and in 1819 their severity has been much increased. The measures resorted to on these occasions, may be classed

under two heads, both of them sanctioning methods, in my mind, injudicious, and one extremely dangerous.

The first is the suspension of the Habeas Corpus Act. Now, this is a very proper precaution, when a conspiracy is carried on by a few principal leaders whose imprisonment puts an end to the plot. But it is no remedy at all, when the evil consists in the discontent of some thousands of unemployed manufacturers. *Uno avulso non deficit alter*: the subalterns, in conducting these popular humours, are fully as able and audacious as the chiefs. The other remedy consists in new laws, restraining the right of speaking and writing. Acts of this kind interpose obstacles to public meetings and public newspapers, and serve to discountenance, for a time, by the authority of Parliament, the abuses of liberty which have prevailed. But it is manifest, that it is impossible to prevent sedition and blasphemy, unless all freedom of speech and the liberty of the press be extinguished. It is impossible

to provide before-hand, by act of Parliament, that all speeches and writings shall keep within the bounds of loyalty and moderation. Therefore, the restraining laws are, except for the moment, inefficient. They are also pernicious; for they admit a principle, which, if pushed to its full extent, authorizes a censorship of the press. They are, therefore, in direct opposition to the maxims of the Revolution, which allowed any man to do freely, that which in itself was harmless. Even the Riot Act, which is justly reckoned a law of great severity, imposes no penalty or restraint, except upon persons who are in the actual commission of a riot. Those, indeed, who have lived in latter times, have reason to praise the moderation of the government, which preserved itself from a Pretender and his party, with so little expense to public liberty.

The final result of these new circumstances leads us to a consideration most unfavourable to liberty. It has been observed, with great truth, that the progress of the influence of

the crown is by slow and gradual advances, and that the resistance opposed by the people, acts by sudden and occasional efforts. Thus, we read in history, that after the means of patronage have enabled the ministry to trench one by one upon the best privileges of freedom, a moment of distress produces enquiry, and, by an unexpected blow, the nation wins a triumph which is equivalent to all that has been gained by the Court. But this advantage is at present entirely lost. Our enquiry on the influence of the Crown, leads us to the conclusion that it is increasing rapidly and continually, and that the murmurs which it excites from time to time, serve only to produce new restrictions upon liberty. Nor can we expect that popular discontent will assume a milder character. Whilst every opinion may be professed, some will always be found hostile to religion and to monarchy; and, whenever the country is visited with distress, those upon whom misfortune falls, will for a time give a willing ear to any thing which professes to be a plan for their relief.

It would seem, however, on the other hand, that we have now gone as far as it is possible to go safely upon the system of restraint. If blasphemy and sedition again alarm the timid, they must be suppressed by the ordinary laws : otherwise we must either admit a censorship, or surrender the present mode of trial by jury.

It is to be hoped, that, rather than adopt either of these tyrannical expedients, England would impeach the minister, who should give such atrocious advice to his sovereign.

It is a consolation, however, to think, that, if the people of England are really determined to preserve their liberties, the laws afford means amply sufficient to quell sedition. They only require a firm and even hand to exercise them ; new statutes on the subject of the press can only be the resort of statesmen weak enough to feel alarm, or wicked enough to take advantage of it for the destruction of their country's freedom.

## CHAP. XXXVI.

LIBERTY OF THE PRESS.—PROBABLE FATE OF  
THE ENGLISH CONSTITUTION.

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If it be desired to know the immediate cause of all this free writing and free speaking, there cannot be assigned a truer than your own mild, free, and humane government; it is the liberty, Lords and Commons, which your own valorous and happy councils have purchased us; liberty, which is the nurse of all great wits. We can grow ignorant again, brutish, formal, and slavish, as ye found us; but you then must first become that which ye cannot be, oppressive, arbitrary, and tyrannous as they were from whom ye have freed us. That our hearts are now more capacious, our thoughts now more excited to the search and expectation of greatest and exactest things, is the issue of your own virtue propagated in us. Give me the liberty to know, to utter, and argue freely, according to conscience, above all liberties.

MILTON.

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THERE is no enquiry more interesting than the examination into the present state of our laws and manners, with a view to ascertain the probable fate of our constitution. We have

seen, in the two last chapters, that the influence of the Crown has increased to an alarming extent, and that the recurrence of periods of popular ferment, instead of checking this influence as it was wont to do in old times is made the occasion of passing new laws, clipping away something every time from the established liberties of the nation. It seems impossible to imagine signs more unfavourable to the maintenance of freedom, or more ominous of that despotism which Mr. Hume has styled the *euthanasia* of our Constitution.

Yet there are circumstances on the other side which, if the nation takes advantage of them, seem to promise a continuance of our free Constitution for some time to come.

Among these I reckon the National Debt, and the Liberty of the Press ; two things, it may be thought, extremely unlike, both in their nature and in their tendency ; yet both, in my view, are impediments to the complete establishment of despotism.

The National Debt is the great cause of the taxes which press upon the country. Now there never was a despotic country which bore taxes to an amount any thing like that which is now entailed on the people of this country. It is liberty, as Montesquieu has well observed, which reconciles nations to the payment of large imposts. If, therefore, a despotism were to be established in England, it must begin by destroying the National Debt; but for this reason every one who has an interest in the funds, has likewise an interest in opposing the establishment of despotism.

But it may be imagined, that the reduction of the taxes would be, of itself, a measure so popular that the country would consent to part with its liberties, on condition of having its burthens taken away at the same time. Besides the great interests, however, opposed to the execution of such a scheme by any King of England, the people generally, I am convinced, prefer the open discussion of public affairs with large taxes, to an absolute mon-

archy with light taxes. It behoves the Chancellor of the Exchequer, however, not to provoke them to balance this question in their minds.

The second great circumstance is, the Liberty of the Press. It seems difficult to conceive a people passing at once from the general diffusion of political knowledge to the utter darkness of despotism, and the prohibition of all discussion which such despotism would require. But the advantages of the liberty of the press, in preserving our Constitution, deserve further consideration.

Some of the observations in the last chapter may seem to lead to a conclusion that the intense light thrown upon all public affairs, tends rather to increase the irritability, and diminish the power, than to augment the strength and improve the vision, of our organs of sight. Allowing, however, the abatement which must be made for the evils produced by an over-straining of attention to political matters, we shall yet find enough of good left to make

under two heads, both of them sanctioning methods, in my mind, injudicious, and one extremely dangerous.

The first is the suspension of the Habeas Corpus Act. Now, this is a very proper precaution, when a conspiracy is carried on by a few principal leaders whose imprisonment puts an end to the plot. But it is no remedy at all, when the evil consists in the discontent of some thousands of unemployed manufacturers. *Uno avulso non deficit alter*: the subalterns, in conducting these popular humours, are fully as able and audacious as the chiefs. The other remedy consists in new laws, restraining the right of speaking and writing. Acts of this kind interpose obstacles to public meetings and public newspapers, and serve to discountenance, for a time, by the authority of Parliament, the abuses of liberty which have prevailed. But it is manifest, that it is impossible to prevent sedition and blasphemy, unless all freedom of speech and the liberty of the press be extinguished. It is impossible

people, as they would do in a private party of three or four. Nor is it the sentiment of A. the editor of one newspaper, or of B. the editor of another, which controls the course of government. These gentlemen are little if at all known: with one or two exceptions, their names are never mentioned. It is their skill in embodying in a daily journal the feelings, and the reasonings which come home to the business and the bosoms of large portions of their countrymen, that obtains for their writings fame and general acceptance. But it would be vain for these persons, powerful as the daily press is, to endeavour to make the people permanently discontented with laws which they loved, and a minister whom they revered. They would not be dreaded, or even read. Equally vain would it be for a vicious, oppressive, and odious government to suppress the liberty of printing. It was not the press which overthrew Charles I., nor could the Inquisition preserve to Ferdinand VII. his despotic power. The dark cabal, the secret conspirator, the sudden tumult,

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political and moral vices, are delivered from a sense of shame, by the want of any effectual restraint upon their actions. In both these circumstances, England has the advantage of Rome. Her institutions are not founded on the postulate that her manners must be rude, and her legislators poor. Commerce, and industry of every kind have been favourites of the law from the commencement. Nor is it easy to emancipate our rulers or our elective body from the sense of shame. Their actions are not submitted to the opinions of a single city, but scanned publicly by sixteen millions of people, nay, by Europe, by America, by the whole globe. The nation itself is too numerous to be generally seduced by the officers of the crown. In a village of one hundred householders, two, or perhaps four, may be gained by government-influence, but the other ninety-six are free to choose their politics and their newspaper. Nor could any anonymous writer venture to appeal to any but the good principles of our nature. No one

the crown is by slow and gradual advances, and that the resistance opposed by the people, acts by sudden and occasional efforts. Thus, we read in history, that after the means of patronage have enabled the ministry to trench one by one upon the best privileges of freedom, a moment of distress produces enquiry, and, by an unexpected blow, the nation wins a triumph which is equivalent to all that has been gained by the Court. But this advantage is at present entirely lost. Our enquiry on the influence of the Crown, leads us to the conclusion that it is increasing rapidly and continually, and that the murmurs which it excites from time to time, serve only to produce new restrictions upon liberty. Nor can we expect that popular discontent will assume a milder character. Whilst every opinion may be professed, some will always be found hostile to religion and to monarchy; and, whenever the country is visited with distress, those upon whom misfortune falls, will for a time give a willing ear to any thing which professes to be a plan for their relief.

after truth; they act like lawyers pleading in a great national cause; and the nation, like a jury, after hearing both sides, may decide between them. Neither are the advantages to be derived from publicity merely speculative. We see instances of them every day. One of the most remarkable effects of public opinion that can be quoted is, perhaps, the personal integrity of our statesmen with respect to money. In the time of Charles II., and a long time afterwards, the greatest men in the country were not inaccessible to what, in these days, we should call bribery. In the time of Lord North, many members of Parliament were influenced by money in its most gross and palpable shape. In these days, (however the same influence may prevail in another form,) it is impossible not to allow that there is much more personal delicacy, and, I will add, a higher sense of honour among our statesmen than formerly.

The greatest benefit, however, that we derive from publicity, is, that it corrects and neu-

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Another much greater subject is under the influence of public opinion ; I mean, the constitution of Parliament itself. The abuses which prevail in the House of Commons, great and glaring as they are, subsist only by permission of the people. If they persevere in requiring boldly, and decidedly, an amendment of those abuses, I feel convinced they will be amended. Where public discussion prevails, it is impossible the truth should not at last prevail : and persons of property, however ill-inclined to reform, would prefer reform to general and permanent discontent among the people.

I have here spoken only of the House of Commons ; but all other courts, powers, and pre-eminentees, are subject to the same control, and are saved from the decay to which they are naturally subject, by the same antiseptic virtue. It is true, as we have observed in a former chapter, that in times of great ferment, the preserving force is not in operation ; but if the constitution is not wholly overthrown in the struggle, the nation in a short time re-

the crown is by slow and gradual advances, and that the resistance opposed by the people, acts by sudden and occasional efforts. Thus, we read in history, that after the means of patronage have enabled the ministry to trench one by one upon the best privileges of freedom, a moment of distress produces enquiry, and, by an unexpected blow, the nation wins a triumph which is equivalent to all that has been gained by the Court. But this advantage is at present entirely lost. Our enquiry on the influence of the Crown, leads us to the conclusion that it is increasing rapidly and continually, and that the murmurs which it excites from time to time, serve only to produce new restrictions upon liberty. Nor can we expect that popular discontent will assume a milder character. Whilst every opinion may be professed, some will always be found hostile to religion and to monarchy; and, whenever the country is visited with distress, those upon whom misfortune falls, will for a time give a willing ear to any thing which professes to be a plan for their relief.

cesses, and the increase of the numbers of the people causing dissensions to kindle more quickly, and appear more formidable than formerly. We must add to all this, that a late minister has greatly abused all those means of government which our Whig ancestors were the first to use, thereby making the usual machinery of the state odious to the people, and of dangerous employment to all future rulers. Mr. Pitt, entrusted at an early age with the care of the government, seems to have indulged, in his subsequent conduct of the state, the vices of an intemperate youth. He made the country live too fast. Prodigality and profusion every where prevailed ; the nation borrowed year after year, with increased and thoughtless extravagance ; new and artificial facilities were invented to enable us to run in debt ; the peerage was depreciated by creations, which, at the same time, enfeebled the gentry of the kingdom ; a factitious vigour was produced by the application, from time to time, of the most hurtful stimulants, and a

temporary repose was obtained at the expense of permanent strength, and the stamina of life itself. Hence a frame, which was formed to endure longer than the ordinary period, may be cut off by a premature failure of its powers. Nations which have been our inferiors, or our rivals, are watching us with envious pleasure, in the hope of seeing us starved into inanition, or perish in convulsions.

On the other hand, we have the general diffusion of the light of knowledge, the long settled habit of liberty, and the security of funded property depending upon that liberty. We have a people of virtuous habits, a high standard of morality, and more of the improvements and embellishments of life combined with energy and purity than perhaps ever existed together. We have a political constitution which favours, instead of repressing, wealth, commerce, learning and the fine arts; we have the whole civilized world as the audience before whom our statesmen must defend their conduct.

These considerations seem to point out a way of safety through all our dangers. We have seen that when our people strongly and manfully express their opinion, their voice prevails. If then, they resist with energy, the slow creeping abuses, and the violent sudden innovations that weaken and deface the edifice of our freedom, it may still be preserved entire. But in order to this, our gentlemen, superior to childish fears, must risk somewhat of their comfort to maintain their liberty. They must submit to hear noisy orators without shrinking: they must cut away with a steady hand the disease which menaces the nobler parts of our political frame. In plain words, they must consent to reform what is barbarous, what is servile, what is corrupt in our institutions. They must make our government harmonize one part with another, and adapt itself to the state of knowledge in the nation. I would fain hope that it will be so: I trust that the people of this great community, supported by their gentry, will afford a spectacle worthy of

the admiration of the world. I hope that the gentry will act honestly by their country, and that the country will not part with the blessings which it obtained by all the miseries which a nation can encounter, — by suffering persecutions, by confronting tyranny, by encountering civil war, by submitting to martyrdom, by contending in open war against powers that were the terror of the rest of Europe. I would fain believe that all ranks and classes of this country, have still impressed upon their minds, the sentiment of her immortal Milton — “ Let not England forget her precedence of teaching nations how to live.”

NOTES.

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## NOTE (A.)

"FOR their images, some of them were brought to London, and were there at St. Paul's cross, in the sight of all the people, broken; that they might be fully convinced of the juggling impostures of the monks. And in particular, the crucifix of Boxley, in Kent, commonly called the *Rood of Grace*, to which many pilgrimages had been made; because it was observed sometimes to bow, and to lift itself up, to shake and to stir head, hands, and feet, to roll the eyes, move the lips, and bend the brows; all which were looked on by the abused multitude, as the effects of a divine power. These were now publicly discovered to have been cheats. For the springs were showed by which all these motions were made. Upon which John Hilsey, then bishop of Rochester, made a sermon, and broke the rood in pieces. There was also another famous imposture discovered at Hailes, in Gloucestershire; where the blood of Christ was showed in a vial of crystal, which the people sometimes saw,

but sometimes they could not see it: so they were made believe, that they were not capable of so signal a favour as long as they were in mortal sin; and so they continued to make presents, till they bribed heaven to give them the sight of so blessed a relic. This was now discovered to have been the blood of a duck, which they renewed every week: and the one side of the vial was so very thick, that there was no seeing through it, but the other was clear and transparent: and it was so placed near the altar, that one in a secret place behind could turn either side of it outward. So when they had drained the pilgrims that came thither, of all they had brought with them, then they afforded them the favour of turning the clear side outward: who upon that went home very well satisfied with their journey, and the expence they had been at. There was brought out of Wales a huge image of wood, called *Darvel Gatheren*, of which one Ellis Price, visitor of the diocese of St. Asaph, gave this account: On the 6th of April, 1537, ‘ That the people of the country had a great superstition for it, and many pilgrimages were made to it: so that the day before he wrote, there were reckoned to be above five or six hundred pilgrims there: some brought oxen and cattle, and some brought money; and it was generally believed, that if any offered to that image, he had power to deliver his soul from hell.’ So it was ordered to be brought to London, where it served for fuel to burn Friar Forrest. There was an huge image of our Lady at Worcester, that was had in great reverence; which, when it was stripped of some veils that covered it, was found to be the statue of a

bishop." — Burnet's History of the Reformation, vol. i. p. 242.

" But the richest shrine in England, was that of Thomas Beckett, called St. Thomas of Canterbury the Martyr. For 300 years, he was accounted one of the greatest saints in heaven, as may appear from the accounts in the Ledger-books, of the offerings made to the three greatest altars in Christ's Church Canterbury. The one was to Christ, the other to the Virgin, and the third to St. Thomas. In one year there was offered at Christ's altar  $3l. 2s. 6d.$ ; to the Virgin's altar,  $63l. 5s. 6d.$ ; but to St. Thomas's altars,  $832l. 12s. 3d.$  But the next year the odds grew greater; for there was not a penny offered at Christ's altar, and at the Virgin's only  $4l. 1s. 8d.$ ; but at St. Thomas's,  $954l. 6s. 3d.$  By such offerings it came, that his shrine was of inestimable value. There was one stone offered there by Louis VII. of France, who came over to visit it, in a pilgrimage, that was believed the richest in Europe." — Burnet's History of the Reformation, vol. i. p. 244.

#### NOTE (B.)

THE following speech of Secretary Cecil on monopolies, is altogether characteristic of the reign of Elizabeth: —

Mr. Secretary Cecil stood up, and said, " There needs no supply of the memory of the Speaker: but, because it pleased him to desire some that be about him to aid his delivery, and because the rest of my fellows be silent, I

will take upon me to deliver something which I both then heard, and since know. I was present with the rest of my fellow-counsellors, and the message was the same that hath been told you; and the cause hath not succeeded from any particular course thought upon, but from private informations of some particular persons. I have been very inquisitive of them, and of the cause why more importunity was now used than afore; which, I am afraid, comes by being acquainted with some course of proceeding in this house. There are no patents now of force, which shall not presently be revoked; for what patent soever is granted, there shall be left to the overthrow of that patent a liberty agreeable to the law. There is no patent if it be '*malum in se*,' but the queen was ill apprized in her grant. But all to the generality be unacceptable, I take it, there is no patent whereof the execution hath not been injurious. Would that they had never been granted! I hope there shall never be more. (All the House said, Amen.) In particular, most of these patents have been supported by letters of assistance from Her Majesty's privy-council; but whosoever looks upon them shall find, that they carry no other style, than with relation to the patent. I dare assure you, from henceforth there shall be no more granted. They shall all be revoked. But to whom do they repair with these letters? To some out-house, to some desolate widow, to some simple cottage, or poor ignorant people, who rather than they would be troubled, and undo themselves by coming up hither, will give any thing in reason for these caterpillars' satisfaction. The notice of this is now public, and

you will, perhaps, judge this to be a tale to serve the time. But I would have all men to know thus much, that it is no jesting with a court of Parliament, neither dares any man (for my own part I dare not) so mock and abuse all the states of this kingdom, in a matter of this consequence and importance. I say, therefore, there shall be a proclamation general throughout the realm, to notify Her Majesty's resolution in this behalf. And because you may eat your meat more savoury than you have done, every man shall have salt as good and cheap as he can buy it or make it, freely, without danger of that patent, which shall be presently revoked. The same benefit shall they have which have cold stomachs, both for *aqua vita* and *aqua composita*, and the like. And they that have weak stomachs, for their satisfaction, shall have vinegar and alegar, and the like, set at liberty. Train-oil shall go the same way; oil of blubber shall march in equal rank; brushes and bottles endure the like judgment. The patent for pouldavy, if it be not called in, it shall be. Woade, which, as I take it, is not restrained, either by law or statute, but only by proclamation, (I mean from the former sowing,) though for the saving thereof, it might receive good disputation: yet for your satisfaction, the Queen's pleasure is to revoke that proclamation; only she prayeth thus much, that when she cometh on progress to see you in your counties, she be not driven out of your towns by suffering it to infect the air too near them. Those that desire to go sprucely in their ruffs, may, at less charge than accustomed, obtain their wish; the patent for starch, which hath so much been prosecuted,

shall now be repealed. But not to make any further performance of the well-uttered and gravely and truly delivered speech of the Speaker, I must crave your favours a little longer to make an apology for myself. I have held the favour of this House as dear as my life, and I have been told that I deserved to be taxed yesterday of the House. I protest my zeal to have the business go forward in a right and hopeful course; and my fear to displease her Majesty by a harsh and rash proceeding, made me so much to lay aside my discretion, that I said, it might rather be termed a school than a council, or to that effect. But by this speech, if any think I called him school-boy, he both wrongs me and mistakes me.

Shall I tell you what Demosthenes said to the clamours which the Athenians made? That they were '*pueriles et dignos pueris.*' And yet that was to a popular state. And I wish that, whatsoever is here spoken, may be buried within these walls. Let us take example of the Jewish synagogue, who would always '*sepelire senatum cum honore;*' and not blast their own follies and imperfections. If any man in this House speak wisely, we do him great wrong to interrupt him; if foolishly, let us hear him out, we shall have the more cause to tax him. And I do heartily pray, that no member of this House may '*plus verbis offendere quam consilio juvare.*'—New Parliamentary History, vol. i. p. 984. 1601.

NOTE (C.)

SPEAKING of the imprisonment of Mr. Wentworth, who was committed, by order of the House, to the Tower, for

a speech, in which he said the Queen had committed dangerous faults, Mr. Hume says, “ The issue of the affair was, that after a month’s confinement, the Queen sent to the Commons, informing them, that, from her special grace and favour, she had restored him to his liberty, and to his place in the House. By this seeming lenity, she indirectly retained the power which she had assumed of imprisoning the members, and obliging them to answer before her for their conduct in Parliament. And Sir Walter Mildmay endeavoured to make the House sensible of Her Majesty’s goodness, in so gently remitting the indignation, which she might justly conceive at the temerity of their member. But he informed them, that they had not the liberty of speaking what and of whom they pleased ; and that indiscreet freedoms, used in that House, had, both in the present and foregoing ages, met with a proper punishment. He warned them, therefore, not to abuse farther the Queen’s clemency, lest she be constrained, contrary to her inclination, to turn an unsuccessful lenity into a necessary severity.”\*

This account is somewhat incorrect. Upon referring to the journal of Sir Simon D’Ewes, which Mr. Hume has quoted, we find that the Queen did not inform the House by her message, that she had restored Mr. Wentworth to his liberty and his place in the House; but that “ whereas a member of the same, on the 1st day of this session, February 8th, in a set speech, uttered divers offensive matters against Her Majesty, and for the same had been committed prisoner to the Tower *by that House*; yet Her Majesty was graciously pleased to remit her justly

\* Hume, vol. v. 4to. p. 240.

occasioned displeasure for the said offence ; and to refer the enlargement of the party *to the House.*" So that she by no means " indirectly retained the power which she had assumed of imprisoning the members," by her proceedings in this case, whatever they may have been on other occasions. This explanation, too, takes away the edge from Sir Walter Mildmay's speech, the important part of which I here subjoin. It will be seen, that it consists of generalities, and that Mr. Hume has culled out those parts only which suited his theory. It must never be forgotten in reading Mr. Hume, that he found an opinion established in England, that the Stuarts had governed like tyrants, and Elizabeth like a good patriot. He attacked this, as he did all other established opinions, from a love of argument and of paradox. He is to the Whig writers and historians what Bayle is to the ancient and modern philosophers. Sometimes he goes so far as to doubt the benefit of liberty altogether. But it is time to pass to Sir Walter Mildmay.— " That for so gracious a dealing it was our bounden duties to yield unto Her Majesty our most humble and hearty thanks, and to beseech Almighty God to enlarge her days as the only stay of our felicity ; and not only so, but to learn also, by this example, how to behave ourselves hereafter ; and not, under the pretence of liberty, to forget our bounden duty to so gracious a Queen. True it is, that nothing can be well concluded in a council, where there is not allowed, in debating of causes brought in, deliberation, liberty, and freedom of speech ; otherwise, if in consultation men be either interrupted or terrified, so as they cannot, nor dare not, speak their opinions freely, like as that council cannot but be reputed

for a servile council; even so all the proceedings therein shall be rather to satisfy the wills of a few, than to determine that which shall be just and reasonable. But herein we may not forget to put a difference between liberty of speech and licentious speech; for by the one men deliver their opinions freely, and with this caution, that all be spoken, pertinently, modestly, reverently, and discreetly; the other contrariwise uttereth all impertinently, rashly, arrogantly, and irreverently, without respect of person, time, or place; and though freedom of speech hath always been used in this great council of Parliament, and is a thing most necessary to be preserved amongst us, yet the same was never, nor ought to be, extended so far, as though a man in this House may speak what and of whom he list. The contrary whereof, both in our own days and in the days of our predecessors, by the punishment of such inconsiderate and disorderly speakers, hath appeared. And so to return, let this serve us for an example, to beware that we offend not in the like hereafter, lest that, in forgetting our duties so far, we may give just cause to our gracious Sovereign to think that this her clemency hath given occasion of further boldness, and thereby so much grieve and provoke her, as, contrary to her most gracious and mild consideration, she be constrained to change her natural clemency into necessary and just severity; a thing that I trust shall never happen amongst wise and dutiful men, such as the members of this House are thought always to be."

This speech, with a very few alterations in language, would make a fair official speech in our own day.

## Note (D.)

THE same cause may have operated with Napoleon against the life of the Duc D'Enghien. It is singular also, that in the rest of the chapter, Machiavel seems to have given directions to persons in the situation of Cromwell, and Bonaparte. He tells us, that those who have become '*tiranni*' of their country ought to examine what the people wish for; and that they will always find they wish for two things: the one, revenge upon those who have been the cause of their servitude; and the other, the restoration of their liberty. In the first of these, the new prince may satisfy them completely. In the second, he may satisfy them in part. For if he analyses the wish of the people for liberty, he will find that a small part only desire it for the sake of power, and that the great majority only desire liberty, that they may live in security. The few he may either remove, or raise to such posts and dignities as will satisfy them; the many will be contented by the enactment of just laws, and a strict observance of them on the part of the sovereign. Thus, he says, the kings of France disposed of the arms and money of the state; but in other things, obeyed the laws. Napoleon, who was a great reader of Machiavel, seems to have taken the advice which is here given by the most profound of political writers.

## NOTE (E.)

It may not be uninteresting to the reader, to read an account of two cases in which the poor man, with the law on his side, triumphed over the pretensions of the highest persons in the kingdom. The first is the more curious, as a relation of it is contained in a letter of Lord Thurlow to a nephew of Mr. Justice Foster. It was a prosecution against the Princess Amelia, for stopping up a foot-path in Richmond Park.

" DEAR SIR,

" I write, at the hazard of your thinking me impertinent, to give you the pleasure of hearing that of your uncle, which, in all probability, you will not hear from him; I mean the great honour and general esteem which he has gained, or rather accumulated, by his inflexible and spirited manner of trying the Richmond cause, which has been so long depending, and so differently treated by other judges. You have heard what a deficiency there was of the special jury, which was imputed to their backwardness to serve a prosecution against the Princess. He has fined all the absentees 20*l.* a-piece. They made him wait two hours, and, at last, resort to a *tales*. When the prosecutors had gone through part of their evidence, Sir Richard Lloyd, who went down on the part of the Crown, said, that it was needless for them to go on upon the right, as the Crown was not prepared to try that, this being an indictment which could not possibly determine it, because

the obstruction was charged to be in the parish of Wimbledon, whereas it was, in truth, in Mortlake, which was a distinct parish from Wimbledon. They maintained their own poor, upheld their own church, and paid tithes to their own parson ; and Domesday Book mentions Mortlake. On the other side, it was said, that Domesday Book mentions it as a baron's fee, and not as a parish ; and that the survey in the time of Henry VIII. mentions Wimbledon *cum capellis suis annexis*, and also, that a grant of it in the time of Edward VI. makes a provision of tithes for the vicar, to officiate in the chapel of Mortlake. The judge turned to the jury, and said, he thought they were come there to try a right, which the subject claimed to a way through Richmond Park, and not to cavil about little law objections, which have no relation to that right. He said, it is proved to be in Wimbledon parish ; but it would have been enough, if the place, in which the obstruction was charged, had been only reputed to be in Wimbledon, because the defendant and jury must have been as sensible of that reputation, as the prosecutors ; but had it not been so, he should have thought it below the honour of the Crown, after this business had been depending three assizes, to send one of their select council, not to try the right, but to hinge upon so small a point as this. Upon which Sir Richard Lloyd made a speech, setting forth the gracious disposition of the King in suffering this cause to be tried, which he could have suppressed with a single breath, by ordering a *nolle prosequi* to be entered. The judge said, he was not of that opinion. The subject is interested in such indictments as these, for continuing

nuisances, and can have no remedy but this, if their rights be encroached upon; wherefore he should think it a denial of justice to stop a prosecution for a nuisance, which his whole prerogative does not extend to pardon. After which, the evidence was gone through; and the judge summed up shortly, but clearly, for the prosecutors.\*

"It gave me, who am a stranger to him, great pleasure to hear, that we have one English judge, whom nothing can tempt or frighten, ready and able to hold up the laws of his country, as a great shield of the rights of the people. I presume it will give you still greater to hear, that your friend and relation is that judge: and that is the only apology I have to make for troubling you with this.

"I am, dear Sir,

"Your most humble servant,

"E. THURLOW."

*Fig-Tree Court, Inner Temple,*

*April 11, 1758.*

Life of Sir M. Foster, p. 85.

The other case is related of the father of Mr. Horne Tooke, a poultreer, in London.

"As Mr. Horne lived in Newport-Street, he was, of course, a near neighbour to his royal highness Frederic Prince of Wales, father to His present Majesty, who then kept his court at Leicester House. Some of the officers of the household, imagining that an outlet towards the market would be extremely convenient to them, as well

\* The defendant was convicted. See Burr. 908, 909.

as the inferior domestics, orders were immediately issued for this purpose. Accordingly, an adjoining wall was cut through, and a door placed in the opening, without any ceremony whatsoever, notwithstanding it was a palpable encroachment on, and violation of, the property of a private individual. In the midst of this operation, Mr. Horne appeared, and calmly remonstrated against so glaring an act of injustice, as the brick partition actually appertained to him, and the intended thoroughfare would lead through, and consequently depreciate the value of his premises.

"It soon appeared, however, that the representations of a dealer in geese and turkies, although backed by law and reason, had but little effect on those, who acted in the name, and, in this instance, abused the authority of a prince, who was probably unacquainted with the circumstances of the transaction.

"On this, he appealed from 'the insolence of office' to the justice of his country; and, to the honour of our municipal jurisprudence, the event proved different from what it would have been, perhaps, in any other kingdom of Europe; for a tradesman of Westminster triumphed over the heir-apparent of the English crown, and orders were soon after issued for the removal of the obnoxious door." — Life of Horne Tooke, vol. i. p. 11.

#### NOTE (F.)

MR. HUME makes what I conceive to be a remark calculated to mislead, when he says, in his history of Charles I.,

“ Some men of the greatest parts and most extensive knowledge that the nation at this time produced, could not enjoy any peace of mind ; because obliged to hear prayers offered up to the divinity by a priest covered with a white linen vestment.”

The point is certainly ingenious, but, as I conceive, obtained by a sacrifice of candour. Both parties allowed that the surplice was in itself a matter of indifference. The objections to the orders concerning the surplice alleged on the part of the Puritans were three :—

1st, That as it was in its essence a matter of indifference, it ought not to be enjoined like an article of faith, but every one should be left to do as he pleased.

2d, That although in itself a matter of indifference, it was not so to the common people ; for many of them thought no worship to God could be effectual, unless performed in a consecrated garment, and thus the practice kept alive a superstitious notion.

3d, Above all, the Puritans urged that no secular person had the right to give orders on this subject. Mr. Cartwright says — “ Christ, and no other, is head of the church. No civil magistrate, in councils or assemblies for church matters, can either be chief moderator, over-ruler, judge, or determiner ; nor has he such authority as that without his consent it should not be lawful for ecclesiastical persons to make church-orders or ceremonies.” \*

In the same sense Mr. Axtон, when examined by his

\* Neale, vol. i. p. 135.

bishop, said, “ I admit Her Majesty’s supremacy so far as if there be any error in the governors of the church, she has power to reform it; but I do not admit her to be an ecclesiastical elder, or church governor.”\* It is true the Puritans would call the surplice “ idolatrous geare,” and other worse names, when they had grown warm in controversy; but they told Archbishop Parker that had the habits and a few ceremonies been left indifferent, they never would have left the church; but “ it was the compelling these things by law made them separate.”†

In fine, the doctrine of the Puritans, or Presbyterians, asserted the “ word of God contained in the Old and New Testament to be a perfect rule of faith and manners.”‡ They maintained that the church ought to be governed by this rule only,—that ceremonies and observances should be as few as possible, and should not be imposed by command of any superior whatever, but left to the free choice of the church itself. They condemned not other churches that differed in ceremonies from theirs, but protested against all dictation on the subject. They held that “ no pastor ought to usurp dominion over another;” and that “ the pastor should be chosen by the congregation.”§

Thus we see that the question of the surplice was connected with a great scheme of ecclesiastical reform; a scheme adopted and established in the native country

\* Neale, vol. i. p. 260.

† Ibid. p. 230.

‡ Confession of Faith of Members of the Propheſyings. Neale, p. 276.

§ Confession of Faith of the Prisoners in Newgate.—Neale.

of Mr. Hume; and which, whatever may be thought of its efficacy to make men better and wiser, was at least not unworthy of "men of the greatest parts and most extensive knowledge."

NOTE (G.)

THIS ACT was passed in 1664. There is nothing more remarkable in our history, or less noticed, than the noble manner in which the Dissenters forgot, in favour of the common cause, the severity with which they were treated. In 1672 they urged the House of Commons to pass the Test Act without any clause in their favour, contenting themselves with a motion for a separate bill of toleration, which was not likely to pass. After the persecution of the reign of Charles II. they joined the church during the reign of James; neither alienated by the harsh treatment they had received, nor allured by the indulgence offered on the part of the King. It is to be regretted that the church have found it inconsistent with their duty to imitate the liberality and public spirit of their dissenting brethren.

THE END.

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